

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Richmond Division

BARBARA H. LEE, et al. }

v. }

Civil Action No.
3:15 CV 357

VIRGINIA STATE BOARD OF ELECTIONS, }
et al. }

February 22, 2016

**COMPLETE TRANSCRIPT OF BENCH TRIAL
BEFORE THE HONORABLE HENRY E. HUDSON
UNITED STATES DISTRICT COURT JUDGE**

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KRISTA L. HARDING, RMR
OFFICIAL COURT REPORTER
UNITED STATES DISTRICT COURT

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1 (The proceeding commenced at 9:06 a.m.)

2 (Krista Harding is now the court reporter.)

3 THE COURT: Good morning.

4 MR. HEARNE: Good morning.

5 MR. KAUL: Good morning.

6 THE COURT: All right, Ms. Pizzini, call our case for
7 trial today.

8 THE CLERK: Case Number 15 CV 357. *Barbara H. Lee et*
9 *al v. Virginia State Board of Elections, et al.*

10 Plaintiffs are represented by Mr. Bruce Spiva,
11 Mr. Joshua Kaul, Ms. Aria Branch and Ms. Amanda Callais.

12 Defendants are represented by Mr. Thor Hearne,
13 Mr. Dana Finberg, Ms. Sara Schneider, Ms. Kirsten Hart and
14 Mr. Stephen Davis.

15 Are counsel ready to proceed?

16 MR. SPIVA: Yes, Your Honor.

17 MR. FINBERG: We're ready, Your Honor.

18 THE COURT: The matter is before the Court this
19 morning for a trial on the merits. I sent to counsel
20 Friday our daily schedule. Did everyone receive that, and
21 have a working idea of how we'll operate this trial today?

22 MR. HEARNE: Yes, Your Honor.

23 MR. FINBERG: Yes, Your Honor.

24 MR. SPIVA: Yes, sir.

25 THE COURT: Any issues before I hear opening

1 statements?

2 MR. FINBERG: Your Honor, we just have a couple of
3 housekeeping matters to raise with the Court.

4 THE COURT: Sure, Mr. Finberg. Come forward.

5 MR. FINBERG: Yes, Your Honor. Thank you.

6 Your Honor, Dana Finberg on behalf of the defendants.

7 THE COURT: Yes, sir. Nice to have you here.

8 MR. FINBERG: Good to be back, Judge Hudson.

9 I've just got three matters to raise with the Court
10 this morning. The first is both the parties have
11 submitted as part of their trial exhibits in this case the
12 reports from the expert witnesses. Ordinarily, if this
13 were a jury trial, I don't think the parties would be
14 putting them on the exhibit lists. We'd like to inquire
15 of the Court whether or not the Court wants to receive the
16 expert reports as exhibits in this case. The parties are
17 certainly amenable to that.

18 THE COURT: I would be fine with that. And, frankly,
19 gentlemen, I'll take it in lieu of the testimony. If you
20 want to put the testimony on you can, but it may be far
21 more instructive for me to have a chance to read the
22 details of the report. But you-all may do it however you
23 wish.

24 MR. FINBERG: Your Honor, what I think it will lead
25 to is a truncated direct. I think both sides feel like

1 they want the opportunity to conduct their
2 cross-examination.

3 THE COURT: That's fine.

4 MR. FINBERG: But, you know, I'm here to tell you
5 that it's not our intention to have our expert witness to
6 essentially read the report into the record when Your
7 Honor is going to have it back in Chambers to read at your
8 leisure.

9 THE COURT: That's fine.

10 MR. FINBERG: But I do think it will help speed up
11 the direct. Both sides, obviously, are going to want to
12 do a fulsome cross. But in this case, since it's a Bench
13 trial, and given the issues that are involved, we think it
14 does make sense for Your Honor to have those expert
15 reports to consider.

16 THE COURT: That's fine.

17 MR. SPIVA: And I agree.

18 THE COURT: Thank you.

19 MR. FINBERG: Your Honor, the second matter is you
20 may have noticed the parties have submitted a fair number
21 of deposition designations to the Court.

22 THE COURT: You know, I did notice that.

23 MR. FINBERG: And our thought is, particularly
24 because most of these depositions are not videotaped, it
25 would make for dry reading in the courtroom. Our

1 suggestion would be that unless Your Honor somehow wants
2 them put into the record some other way, that those simply
3 be submitted to the Court as trial evidence for the Court
4 to consider, again, at its leisure, rather than taking up
5 the time during these two weeks that we're here in front
6 of you.

7 THE COURT: All right. What would be helpful to the
8 Court is if you could point out what portions of those
9 depositions I should review. I don't know that I want to
10 spend every evening reading all these depositions,
11 particularly those portions that aren't pertinent to the
12 immediate issues in this case. So direct my attention to
13 that, okay?

14 MR. FINBERG: Your Honor, the parties submitted
15 highlighted depositions. And the way that we highlighted
16 it is the portions that both sides agreed on are in one
17 color. Plaintiffs' designations are in a separate color
18 if they weren't agreed on. Defendants' are in another
19 color if they weren't agreed on. I think there was a key
20 supplied with the designations.

21 THE COURT: Okay.

22 MR. FINBERG: That would let the Court know which
23 party is proffering which evidence.

24 THE COURT: All right. That's very helpful. Thank
25 you.

1 MR. SPIVA: And those have been filed, Your Honor.

2 At some point, do you want us to actually label them with
3 an exhibit sticker and submit them as an exhibit, or is it
4 fine that they've been filed on the record?

5 THE COURT: If they're going to be made a part of the
6 record, and could be referred to in future proceedings,
7 they probably ought to have an exhibit number.

8 MR. SPIVA: Will do, Your Honor.

9 MR. FINBERG: Probably the easiest thing would be to
10 give each one a separate exhibit number.

11 THE COURT: And you can coordinate that with
12 Ms. Pizzini, because she is responsible for keeping track
13 of the numbers of the exhibits, okay?

14 MR. SPIVA: Will do.

15 THE COURT: All right.

16 MR. FINBERG: And the final item on my list, Your
17 Honor, would be that we'd like -- we would like to make a
18 motion to exclude witnesses after the opening statements
19 are done. We're fine with the witnesses being here for
20 the openings.

21 THE COURT: I do that as a matter of course.

22 MR. FINBERG: Thank you.

23 MR. SPIVA: And, Your Honor, I assume that that's
24 excepting expert witnesses and party representatives?

25 THE COURT: I ordinarily don't exclude expert

1 witnesses because they're not going to be rebutting
2 another witness' testimony or touching on it. Do you
3 agree?

4 MR. FINBERG: That's what we had in mind, Your Honor.
5 Each party's representative can be here, and the expert
6 witnesses can be here.

7 THE COURT: That's fine.

8 MR. FINBERG: Thank you, Your Honor.

9 THE COURT: On that note, are we ready to proceed?

10 MR. SPIVA: We are, Your Honor.

11 THE COURT: Okay. Very well.

12 Who'll be giving the opening statement on behalf of
13 the plaintiffs?

14 MR. SPIVA: I will, Your Honor.

15 THE COURT: All right. Go right ahead.

16 MR. SPIVA: Good morning, Your Honor. Bruce Spiva.
17 Good to be before you again. And you've been introduced
18 to the team already, so I won't go through that again.

19 Your Honor, I wanted to start with a brief quote.

20 *"Many of the issues of civil rights are very complex and*
21 *most difficult. But about this there can and should be no*
22 *argument: every American citizen must have an equal right*
23 *to vote. There is no reason which can excuse the denial of*
24 *that right. There is no duty which weighs more heavily on*
25 *us than the duty we have to insure that right."*

1 And that was a quote Your Honor may be familiar with
2 from President Johnson in an address to the joint session
3 of Congress 10 days after the Selma March, what has become
4 to be known as Bloody Sunday, where he was introducing the
5 Voting Rights Act. And I wanted to talk for a minute
6 about the significance of history because that is the
7 subject of the motion, and there will be some testimony on
8 that.

9 The Voting Rights Act was passed largely to enforce
10 the guarantees of equal voting rights provided by the
11 Fifteenth Amendment, which had been ratified almost 100
12 years earlier. The Fifteenth Amendment, coming on the
13 heels of the Civil War, was a promise of equal voting
14 rights, regardless of race. It was a promise, though,
15 that has not been kept. And indeed, has been denied not
16 only through violence and intimidation, but ostensibly
17 through race-neutral measures, such as poll taxes and
18 literacy tests.

19 In President Johnson's words, again, Your Honor,
20 *"Every device of which human ingenuity is capable, has*
21 *been used to deny this right."* And Virginia was no
22 exception, Your Honor. Virginia tried to circumvent the
23 Twenty-Fourth Amendment which barred poll taxes until the
24 Supreme Court unanimously struck down that law. The
25 Virginia State Constitutional requirement that individuals

1 registering to vote present proof of literacy was in
2 effect until 1974. The requirement to obtain, maintain,
3 keep current, and present a valid photo ID, Your Honor, I
4 submit to you, is another device that is being used to
5 deny the right to vote in Virginia.

6 It is no accident that there was a sudden hue and cry
7 about voter fraud among Republican lawmakers after
8 President Obama, the first black president, was elected to
9 office, and the first Democrat to win Virginia's
10 electoral since Lyndon Johnson in 1964. It is no
11 coincidence that after his reelection in 2012, where he
12 won the Commonwealth of Virginia for the second time, that
13 the Republicans in the General Assembly pushed through a
14 photo ID law, even though they had just passed a strict
15 non-photo ID requirement one year earlier in 2012.

16 The then Governor, Governor McDonnell, had called
17 that 2012 law a huge success. And his staff made clear
18 that the Governor thought it *"worked as designed to*
19 *prevent voter fraud, and to ensure that registered voters*
20 *were able to cast their ballots and have their vote*
21 *counted."*

22 I'm continuing the quote from one of the Governor's
23 staff. And this is in Plaintiffs' Exhibit 119. *"The*
24 *Governor believes Virginia's system as currently*
25 *constructed, has strong safeguards against any voter*

1 *fraud, and has proven successful and therefore he supports*
2 *it in its current form."*

3 And this was an e-mail from --

4 THE COURT: Mr. Spiva, I don't want to interrupt you,
5 but I assume the exhibits that you're publishing there's
6 no objection to?

7 MR. SPIVA: This one there is no objection, Your
8 Honor.

9 THE COURT: Fine. Just want to make sure you're not
10 publishing exhibits that are not in evidence.

11 But go right ahead. Sorry for interrupting you.

12 MR. SPIVA: Not at all.

13 Nonetheless, the Republican-controlled General
14 Assembly pushed through a strict photo ID law in 2013
15 which the Governor ultimately signed, despite having
16 express support for the 2012 law and misgivings about the
17 photo ID law being perceived as a measure to suppress
18 voting rights.

19 You can take that one down.

20 Our expert, Dr. Lichtman, will explain that over the
21 past 15 years, both nationally and in Virginia, white
22 voters have accounted for a declining share of the
23 electorate. At the same time, there has been a marked
24 shift in the voting patterns of young votes, while the
25 role of young voters in the Obama coalition nationally has

1 been extensively discussed, it is important to note that
2 in Virginia, age has become the demographic factor, other
3 than race, that best predicts how an individual will vote,
4 and the importance of that factor has been increasing.

5 These changes have had a clear partisan effect. They
6 have improved the landscape for Democrats. Dr. Lichtman's
7 analysis on nine elections for President, U.S. Senate, or
8 Governor in Virginia during the period from 2004 to 2014,
9 shows that Republicans won two of the three elections with
10 higher levels of white turnout, but they lost all the
11 elections with a relatively low white turnout.

12 The evidence will show that the photo ID law has
13 substantial disproportionate affects on these very
14 consistencies that vote heavily Democratic. The changing
15 demographics of the electorate, in fact in favor of these
16 consistencies, African-Americans, Latinos, young voters,
17 who vote heavily Democratic, certainly provide a powerful
18 motive for Republicans to attempt to slow that trend.

19 Now, the Supreme Court has recognized in *Arlington*
20 *Heights*, and in many other cases, that politicians will
21 rarely admit that they are motivated by a racially or
22 ethnically discriminative motive, which is why it set
23 forth a framework for determining discriminatory intent
24 that looks at the context and the history of the decision.

25 The same can also be said about discrimination

1 against young people and Democrats. Rarely do politicians
2 openly discuss to rein in the youth vote, or deliberately
3 making it more difficult for Democrats to vote. And
4 although one rarely finds a smoking gun, admission of
5 discriminatory purpose, and *Arlington Heights* acknowledges
6 that intent can be shown through a multifactor analysis
7 that may not include direct evidence, we will show you
8 some explicit statements that strongly suggest the real
9 motive behind the voter ID law was to suppress the vote of
10 these groups.

11 Your Honor, I was going to mention an e-mail that I
12 believe there is an objection to. Is it all right if I
13 talk about it --

14 THE COURT: You can mention it, but you cannot
15 publish it if it is not in evidence.

16 MR. SPIVA: All right. Thank you, Your Honor.

17 THE COURT: All right.

18 MR. SPIVA: Republic Congressman, Rob Wittman, sent
19 an e-mail to Virginia GOP Caucus Consultant Paul Houghton
20 on March 1, 2013, which was entitled "*Work plan for voter*
21 *ID registration and turnout.*" And in that e-mail, he
22 states that in 2012, the new voters that registered 12
23 months prior to the election voted 62 to 30 for Obama.
24 The Democrats have a very sophisticated voter registration
25 and turnout effort. The Hispanic turnout was a

1 significant part of the new voter turnout. The Obama
2 folks are now reaching out to 16 year olds, and they are
3 focusing on these youth in the community, the minority
4 communities.

5 Mr. Houghton passed on the e-mail to Delegate Kirk
6 Cox and said Bob Wittman visited with me and the speaker
7 on Friday. This is some info he wanted us to have as we
8 move forward in 2013.

9 And this e-mail certainly shows what should be
10 obvious, that Republican lawmakers were well aware of the
11 effects that Virginia's changing demographics were having
12 on their prospects. But it also suggests that
13 implementing a new voter ID law in 2013, was part of their
14 plan to do something about it.

15 Now, defendants may tell you that most people in
16 Virginia have an acceptable form of photo identification.
17 But the Constitution, Your Honor, and the Voting Rights
18 Act, do not protect the rights only of most people. They
19 protect the rights of every eligible Virginian to vote.
20 And our experts will tell you something that the
21 Commonwealth's own internal documents confirm, that at
22 least tens of thousands, and perhaps hundreds of
23 thousands, of people do not have an acceptable form of
24 photo ID to vote.

25 So even though the case law we've cited to you in our

1 conclusions of law correctly says that this Court should
2 be concerned about the denial of even one person's right
3 to vote by this photo ID law, this Court should know that
4 "*most people*" excludes tens, probably hundreds of
5 thousands, of people.

6 We will present evidence that these burdened and
7 disenfranchised voters include disproportionately large
8 shares of African-American, Latino, young, and Democratic
9 voters. The burden cannot be justified by the mere
10 invocation of the specter of voter fraud. The evidence at
11 trial will show that in-person voter impersonation fraud,
12 only type of fraud that a voter ID law can theoretically
13 prevent, is exceedingly rare in American elections, and
14 has not been documented in any recent election in
15 Virginia.

16 Dr. Minnite will testify that her extensive analysis,
17 and research over more than a decade, shows that there's
18 little to no voter fraud. Dr. Lichtman also points to
19 additional studies showing no voter impersonation fraud,
20 including the national study by the Republican National
21 Lawyer's Association that set out to prove the existence
22 of voter fraud, but ended up unable to uncover even a
23 single incident of impersonation in Virginia during the
24 10-year time period, the RNLA study.

25 And in addition to the overwhelming expert evidence

1 that voter impersonation fraud is strategically
2 nonexistent, most of defendants' own fact witnesses will
3 also admit that they know of no specific instances of
4 voter impersonation fraud.

5 You will hear from one defense expert, Dr. Richman,
6 of a theory that he has based on a survey meant to track
7 and analyze the voting behavior of citizens that
8 potentially thousands of non-citizens have been voting in
9 American elections, risking not only a felony charge, but
10 deportation. But Dr. Richman's report is based on an
11 article that he wrote that has been roundly criticized and
12 discredited by several scholars in the field, and in
13 particular, the researchers that founded and maintain the
14 survey database from which he purports to draw his
15 conclusions.

16 Now, Your Honor, you may hear testimony from some of
17 the defendants' witnesses that the burden of obtaining,
18 and presenting an ID, is slight. But you're also going to
19 hear from several witness that will completely undermine
20 that claim. You will hear from witnesses like Josephine
21 Okiakpe, an African-American woman who attempted to vote
22 in 2014 with several forms of ID, such as a North Carolina
23 driver's license, a voter registration card, birth
24 certificate, social security card, a Costco card, and some
25 mail she had in her purse. And even though several of

1 those forms of ID, Your Honor, would have been plenty to
2 establish her identity, and many would have been
3 sufficient under the 2012 voter ID law, she was still
4 turned away.

5 She doesn't have a car, and has to rely on her
6 daughter for transportation. Her daughter, ultimately,
7 had to take time off from work to take Ms. Okiakpe to the
8 registrar's office to get a free ID. The burden to her,
9 the Virginia's new voter ID law, was not slight. It was
10 severe, and it almost cost her her vote.

11 She will tell you that she grew up during a time when
12 there was still white and colored signs on bathroom doors.
13 And that she experienced that same type of shame being
14 turned away from the voting booth because she didn't have
15 the type of ID required by the new voter ID law.

16 You'll hear from Megan Cotten, a young Arlington
17 resident who doesn't have a Virginia driver's license.
18 Ms. Cotten, like so many thousands of other Virginians,
19 was not aware of the new photo ID requirement when she
20 went to vote last fall. That's not surprising, because,
21 as the evidence will show, the funds for outreach
22 concerning the new law were entirely inadequate, unlike
23 the implementation of the 2012 law where the governor
24 required that all voters be contacted.

25 Commissioner Cortes, Department of Election

1 Commissioner, Commissioner Cortes, will tell that you that
2 the state election officials were provided only about
3 \$200,000 per year for outreach relating to the 2013 voter
4 ID law. That it's compared to about \$2.3 million for the
5 2012 law. And that beyond that, the General Assembly did
6 nothing to ensure that voters were aware of the change in
7 the law.

8 This outreach failure, and the irrational and
9 unjustified photo ID requirement, had severe consequences
10 for Ms. Cotten. She has an Alabama's driver's license,
11 which could prove her identity, but that did not matter
12 because an out-of-state license is not an acceptable form
13 of ID under the law. She had a piece of mail with her
14 that likely would have sufficed under the 2012 voter ID
15 law, but of course that didn't have a photo on it, and it
16 was therefore unacceptable under the 2013 law.

17 And like so many others, the poll worker she
18 encountered did not inform her that she had the right to
19 vote provisionally. She left and headed to her job, which
20 was located in Bethesda, Maryland. She was so upset about
21 it that she communicated with the Secretary of the
22 Commonwealth, Levar Stoney, who had someone on his staff
23 write her back, and inform her about her right to vote
24 provisionally. But it was too late because she could not
25 take the time from work to go all the way back to

1 Arlington to her polling place to cast a provisional
2 ballot. We'll show you the documents in which the staff
3 member acknowledges that Ms. Cotten was disenfranchised.

4 You'll hear from people who were too poor to renew a
5 license that was expired for more than one year and didn't
6 have the time, transportation, or knowledge to go to the
7 registrar's office to get a free ID. The imposition of a
8 requirement that a license not have expired longer than 12
9 months prior to voting is completely irrational. And as
10 the Commissioner of the defendant, the Department of
11 Elections has testified, completely unrelated to the
12 purported rationale for this law to verify one's identity.

13 If I'm Bruce Spiva 13 months ago, I remain Bruce
14 Spiva today, regardless of whether my license has expired.
15 And this irrational hoop that some people must jump
16 through to vote was regulated into the law at the
17 instigation of the law's main sponsor, Senator Obenshain,
18 who pressured the VSBE to deny the use of any expired
19 license, regardless of the length of time.

20 And this definition of "valid" in relation to a
21 license had not been in the original version of the
22 regulation which permitted the use of a driver's license
23 without regard to their expiration date. After pressure
24 from Senator Obenshain, the two Republican SBE members
25 voted for the 12-month expiration requirement in the

1 absence of the Democratic member of the SBE. And that was
2 a chance -- even that was longer than Senator Obenshain
3 wanted. He wanted a 30-day period.

4 This regulation, and the sponsor's participation in
5 its promulgation, really lays bare the irrationality and
6 discriminatory purpose behind this law because there are
7 other forms of ID, like the free voter ID, for instance,
8 that have no expiration date and that are perfectly
9 permissible under the photo ID law. That makes no sense
10 except as a vehicle to burden people with limited means,
11 and to put up an additional unjustified barrier in front
12 of the ballot box.

13 You're going to hear from some Virginia citizens with
14 disabilities, Your Honor, for whom this law also imposes a
15 severe burden on their constitutional right to vote.
16 You'll hear from Laning Polatty, whose disability requires
17 him to be homebound for most of the year, and in bed
18 typically 23 hours a day. His disability causes him
19 cognitive issues, and voting is a struggle under the best
20 of circumstances.

21 He realized when he got to the polls in 2015 that he
22 did not have his voter ID. "*Luckily*," and I put that in
23 quotes, Your Honor, his wife had brought him there and was
24 able to take him to the registrar's office that day where
25 he obtained another voter ID, which he could get, by the

1 way, with an affirmation of identity. A fact that, again,
2 lays bare that this is just a barrier to voting, not fraud
3 prevention, because once he got to the registrar's office,
4 all he had to do was affirm his identity, no
5 documentation, no ID, and go right back to the polls. His
6 wife then had to drive him back to the polling place the
7 same day to cast a ballot.

8 The entire experience took well over two hours of
9 both Mr. Polatty's, and his wife's time. The burden that
10 this law caused them was not slight. Thank goodness they
11 owned a car, unlike the thousands of other Virginia
12 citizens who were burdened by this law. Thank goodness
13 his wife was able to take time from work to take him.

14 The franchised should not be protected only for the
15 fortunate, for those without disabilities, or for those,
16 like Mr. Polatty, who can scale overwhelming odds made
17 more difficult, and without justification, in Virginia's
18 photo ID law.

19 You will also hear from a woman who's
20 high-functioning autistic adult son was turned away
21 because he had forgotten his ID. And he, like so many
22 others, was not informed about the possibility of voting
23 provisionally. Because of his disability, he is
24 conflict-averse. He would have left without voting but
25 for the fact that his mother went back up to the polling

1 place and helped advocate for him so he could vote
2 provisionally. She then went through the same routine
3 that the Polattys did. She took him through the odyssey
4 of the registrar's office to get another ID, and then back
5 again to cure his ballot. And she'll tell you that for
6 that young man, and for her, the burden of this photo ID
7 law is a heavy burden indeed.

8 You will hear from these Virginia citizens, and many
9 more, about the heavy price that Virginia's ID law imposed
10 on them in time, in dignity, money, and for some, outright
11 disenfranchisement. For these Virginians -- and there is
12 no dispute, Your Honor, that they are eligible voters with
13 a constitutional right to vote. The burden imposed by the
14 voter ID law is in no way slight.

15 And that is true not only of the individuals that
16 will come into this courtroom to testify, but of thousands
17 of other Virginians. Our experts are going to explain
18 that there are hundreds of thousands of registered voters
19 who do not have an acceptable form of photo ID. And
20 that's not surprising, Your Honor, because the
21 Commonwealth essentially reached the same conclusion in
22 its internal analysis prior to the law going into effect.

23 But what's worse is that this likely significantly
24 understates the number of people whose right to vote will
25 be denied under this law, because the available data, Your

1 Honor, only permits analysis of those people who are
2 actually registered. But our experts will tell you, there
3 are many people who won't register because they either
4 know that they don't, or think that they don't, have the
5 proper ID to actually vote.

6 And many among the registered will not vote because
7 they know, or they think that they don't, have the proper
8 ID. And the reason I emphasize "*think that they don't*,"
9 Your Honor, is, as Dr. Lichtman will explain, in a recent
10 study of the effect of a voter ID law on Texas'
11 Twenty-Third congressional district, it was determined
12 that 5.8% of registered non-voters cited lack of
13 acceptable voter ID as the principal reason for not
14 voting. And 12.8% cited not having an ID as one reason
15 for not voting.

16 But perhaps more disturbing is that the vast majority
17 of non-voters did indeed possess an approved form of ID in
18 Texas. In Texas. But through some combination of
19 misunderstanding, doubt, or lack of knowledge, believed
20 that they did not possess the necessary photo
21 identification. And the point here, Your Honor, as
22 Dr. Lichtman will tell you, is this means that photo ID
23 laws, like Virginia's, causes a substantial number of
24 people to not vote, even if they have the required ID,
25 just because of the confusion and misinformation caused by

1 these laws.

2 Now, these facts, Your Honor, were not a secret at
3 the time the General Assembly was considering this bill.
4 Opponents of SB1256, including civil rights groups,
5 emphasized that a photo ID law would make voting more
6 burdensome, particularly for minorities, the elderly,
7 young people, and those without driver's licenses.

8 The Advancement Project provided testimony before the
9 Privileges and Elections Committees in the House and the
10 Senate explaining that photo ID laws had a disproportional
11 impact on communities of color, but the General Assembly
12 did not do anything to take into account the specific
13 objections raised by those like The Advancement Project
14 and the NAACP, and others. And senators and delegates
15 warned during the debates on the floor over the photo ID
16 law that obtaining a free voter ID in person at a general
17 registrar's office would be a substantial burden for many
18 voters.

19 In the House, Delegate Krupicka, and apologies for
20 the pronunciation, I'm not sure I have it right, explained
21 that his district in northern Virginia is close to a metro
22 stop, and that a lot of folks in his area were elderly or
23 poor, and rely on the metro as their only form of
24 transportation. He states on the House floor that a voter
25 in his district, without access to a car, would have to

1 travel between two to three hours by bus each way to reach
2 the general registrar's office.

3 Delegate Surovell, who will testify here, also stated
4 on the floor of the House that voters in his district
5 without a driver's license would have to take probably
6 four buses on a trip that would last up to three hours
7 each way. Even for voters traveling by car, the trip to
8 reach the registrar's office might take 45 minutes each
9 way.

10 Where the Commonwealth places a severe burden on the
11 fundamental right to vote, the Court should evaluate the
12 law for strict scrutiny. And we would submit, Your Honor,
13 that these fanciful non-evidence based assertions of voter
14 fraud don't begin to justify the heavy burden that this
15 discriminatory voter ID law put on thousands of Virginia's
16 citizens right to vote. There is not a rational basis for
17 this law. It definitely cannot meet strict scrutiny.

18 Without evidence of voter impersonation fraud, the
19 last refuge of defenders of the photo ID law is to claim
20 that the measure increases voter confidence in the
21 election process, because at least people will know that
22 election officials are protecting against even the
23 possibility of such fraud. But the social science which
24 we will present, Your Honor, confirms what common sense
25 should tell us, that voter ID laws do nothing to increase

1 confidence in the integrity of the election system.

2 Indeed, it appears that the public is not paranoid about a
3 chimerical concern that thousands of people are risking a
4 felony conviction in an attempt to steal elections by
5 committing voter impersonation fraud one person at a time.
6 And the social science also tells us, although we need to
7 be careful about drawing conclusions from raw voter
8 turnout figures, that indeed these laws tend to have a
9 suppressive effect on the voter.

10 The Department of Elections commissioner, Edgardo
11 Cortes, expressly testified that as chief election officer
12 of Virginia, he does not believe that the photo ID has
13 increased voter confidence in Virginia's election system.
14 And even the defendants' experts who relied on the Courts
15 to establish that there is simply no relationship between
16 the presentation of a photo ID, and the public's
17 confidence, in the electoral system.

18 But perhaps more importantly, Your Honor, when we
19 hear the proponents of this law refer to voter confidence,
20 they seem to ignore what the photo ID law does to the
21 confidence and the integrity of our democracy to the
22 people who the law burdens, to those who believe based on
23 substantial evidence that this law was enacted to suppress
24 the votes of blacks and Latinos, young people, urban
25 dwellers and Democrats. If their faith in the system is

1 shaken because they see this law -- that this law is
2 targeted at them, then their confidence in the integrity
3 of our electoral system is profoundly shaken. That must
4 count as much as those few who may believe against all
5 evidence that their voters are devalued by phantom voter
6 fraud.

7 In conclusion, Your Honor, I believe in the end we
8 will show you through the evidence we will present that
9 Virginia's photo voter ID law should be enjoined on at
10 least six independent grounds.

11 We will establish, Number 1, that Virginia's photo ID
12 law imposes substantial and severe burdens on the right to
13 vote, warranting high scrutiny. In contrast, the benefits
14 of the Commonwealth from the imposition of the photo ID
15 law are non-existent. The facts we will develop in this
16 case will demonstrate that voter impersonation fraud, the
17 only type of fraud preventable by photo ID law, does not
18 exist or is very rare in Virginia.

19 Moreover, the evidence will also make clear that such
20 forms of fraud did not exist at the time SB1256 was
21 passed. And then not surprisingly, the photo voter ID law
22 does not improve confidence in the voting system.

23 Weighing substantial and severe burdens on the fundamental
24 right to vote on the one hand against no benefit, or
25 little benefit to the Commonwealth on the other hand,

1 should lead the Court to strike down the law under the
2 First and Fourteenth Amendment.

3 Secondly, we will establish, Your Honor, through the
4 evidence that Virginia's photo ID law resulted in, and is
5 intended to result in, the denial or abridgment of the
6 right to vote by African-American and Latino Virginians in
7 violation of the Voting Rights Act. The challenge,
8 standard, or practice, the voter ID law imposes a
9 discriminatory burden on a protected class, and that
10 burden is at least, in part, caused by, or linked to,
11 social and historical conditions that have, or currently
12 produce, discrimination against members of those protected
13 classes. And we will show through the testimony of
14 Dr. Lichtman and Dr. Smith that almost all of the
15 so-called Senate Factors apply in Virginia, and that they
16 are causally connected to the burden the photo ID law
17 places on the rights of African-Americans and Latinos in
18 Virginia.

19 Thirdly, Your Honor, we're going to show you that the
20 voter ID law was enacted with the intent to discriminate
21 on the basis of race in violation of the Fourteenth and
22 Fifteenth Amendments.

23 Fourth, we're going to prove that the General
24 Assembly enacted the photo ID law to discriminate against
25 Democrats in a restrictive political participation in

1 violation of the First and Fourteenth Amendments.

2 Fifth, we will prove that the General Assembly has
3 deliberately sought to abridge the rights of young people
4 to vote in violation of the Twenty-Sixth Amendment.

5 And finally, Your Honor, under the rational basis
6 test, we believe we will show you that Virginia's photo ID
7 law irrationally distinguishes between voters who have a
8 photo ID that can be used for voting, and individuals who
9 have an expired photo ID, or an ID issued by another
10 state, or out-of-state educational institution. The
11 distinction between these two groups, there is no rational
12 relationship to any legitimate state interests.

13 For each of these reasons, at the end of this case,
14 we will ask you to enjoin enforcement of Virginia's photo
15 ID law.

16 Thank you, Your Honor.

17 THE COURT: Thank you, Mr. Spiva.

18 MR. HEARNE: Good morning, Your Honor.

19 THE COURT: Good morning, Mr. Hearne. Go right
20 ahead.

21 MR. HEARNE: Following the 2000 presidential
22 election, our nation, as well as most states, undertook
23 significant evaluation of our election administration
24 nationally, and at the state level. We learned in the
25 *Bush v. Gore* litigation that literally several hundred

1 votes in the administration of an election could turn the
2 outcome of a presidential race. That prompted national
3 reform that we're familiar with at the federal level, and
4 the Help America Vote Act. The Help America Vote Act was
5 an Act that was adopted by Congress with bipartisan
6 support. It included a number of factual findings, as
7 well as recommendations for states, and then specific
8 requirements that states adopt.

9 Among its findings, among the bipartisan reason that
10 Help America Vote Act adopted a provision, which included
11 the requirement of what's now call HAVA ID, was the
12 finding that there was substantial vote fraud, or
13 likelihood of vote fraud, occurring in the form of voter
14 registration fraud. Meaning somebody would send in a
15 registration, that registration is famously attested to
16 during Senate hearings even in the name of a dog named
17 Ritzy Meckler was found -- was put on the voter rolls.
18 Somebody could then cast a ballot in the name of that
19 fraudulent registrant.

20 But there was significant fraudulent registration
21 occurring in states around the country prior to the 2000,
22 2004 election that was the subject of obvious concern.
23 Registration fraud was addressed in HAVA by requiring
24 states, which Virginia does require, to adopt a HAVA ID to
25 be provided for a first time voter who registers to prove

1 that it's really a voter. Now, HAVA ID does not require
2 photo ID, but it allowed --

3 THE COURT: When you use the term "HAVA," you're
4 referring to the legislation, Help America Vote Act, is
5 that right?

6 MR. HEARNE: Correct. It's HAVA, for the record.

7 THE COURT: Go right ahead.

8 MR. HEARNE: Not hava nice day, but the Help America
9 Vote Act.

10 Because of that fraud, which Congress found was
11 significant and of concern, they adopted the Help America
12 Vote Act identification requirements. But those were a
13 first step. And Congress specifically said that states
14 were allowed, and encouraged even, to adopt more stringent
15 requirements, or requirements for identification, in
16 addition to those required by the Help America Vote Act.

17 Following the 2004 election, President Carter and
18 Secretary of State, James Baker, convened the Carter-Baker
19 Commission, which was cosponsored by a number of
20 organizations, including American University, the Pew
21 Foundation, the Carter Foundation, President -- I mean,
22 Secretary Baker's foundation as well.

23 The Carter-Baker Commission conducted hearings
24 nationally, heard testimony from experts throughout the
25 academic world, many election officials, secretaries of

1 state, in terms of best practices that states should
2 follow in the conduct of federal elections. Carter-Baker,
3 and their findings, are noted. And I have the graphic
4 that's in evidence. Just a coversheet of the Carter-Baker
5 Commission. That will be discussed. All the experts
6 refer to that famously.

7 The Supreme Court itself in the *Crawford* decision
8 considered the Carter-Baker recommendations and findings
9 to be of great weight in the Supreme Court's decision.
10 Among the Carter-Baker decision -- or the recommendations
11 was for photo ID. That was a recommendation that was
12 supported very strongly by President Carter, and by a
13 fellow, Bob Pastor, who is one of President Carter's
14 assistants who was head of the Election Law Center at
15 American University. He was Democrat like. The
16 recommendation for photo ID was supported by, among
17 others, Andrew Young.

18 So it was not a Republican partisan recommendation.
19 Nor was it one that was thought to be racially
20 discriminatory in any way. The recommendation that
21 Carter-Baker had was for states to require photo ID that
22 satisfied the federal real ID law, which is far stricter
23 than what Virginia has in fact adopted.

24 The Carter-Baker recommendation was then followed by
25 many states in various iterations. States began to review

1 those recommendations. The recommendation was made for --
2 by the Carter-Baker Commission for really two reasons.
3 First, they found that there was a legitimate concern
4 about vote fraud.

5 And then, secondly, as the Supreme Court also
6 recognized in *Crawford*, there's a desire to restore and
7 enforce public confidence in our election process. And
8 that was one of the findings particularly that President
9 Carter noted in the Carter-Baker Commission, was the
10 confidence that having a uniform consistent system of
11 photo identification for all citizens, would actually
12 encourage participation and increase confidence, as well
13 as prevent vote fraud, or prevent the possibility of vote
14 fraud, being accomplished through voter registration
15 fraud.

16 So those recommendations of Carter-Baker were
17 accepted by many states, and followed by many states,
18 including Indiana. Indiana, of course, was the state that
19 was the subject of the challenge in the Supreme Court
20 *Crawford* decision. Indiana included a voter
21 identification requirement stricter than that of Virginia.
22 In Indiana, to obtain a voter identification, you had to
23 also provide some supporting documents, such as a birth
24 certificate. Some of those documents cost money, \$25 or
25 so, and created an additional burden, if you will, on

1 obtaining the identification necessary to vote.

2 Virginia has none of that. Virginia allows, as we
3 discussed, or will discuss in the evidence in the form
4 that will be presented, just requires self-authentication
5 of identity. No one needs to pay for a birth certificate,
6 or present a birth certificate. PID is provided to them
7 for free simply upon their signature, the last four digits
8 of their social security number, and their birth date.

9 So it was in that context, the context of the
10 Carter-Baker Commission, the context of the *Crawford*
11 decision, that Virginia adopted its voter identification
12 requirements. The laws that we've talked about in the
13 course of preparing for trial -

14 THE COURT: In both 2012 and 2013?

15 MR. HEARNE: Correct.

16 THE COURT: Okay.

17 MR. HEARNE: - variously in the depositions and
18 discussion, those two statutes will be referred to by, for
19 example, SB1256. But for purposes of convenience, we've
20 adopted the nomenclature, we're calling them the 2012 law
21 and the 2013 law. And I will use that in my remarks. And
22 I think much of the testimony will refer to them in that
23 context as well.

24 Both laws are facially and racially neutral laws.
25 Both laws require the difference significantly being the

1 2012 law allowed for a form of non-photo identification
2 which was a voter registration card sent to the registrant
3 at the address when a registration was submitted.

4 This raised some concerns because -- it raised
5 concerns because it would have allowed somebody to file a
6 registration form, then a voter identification card would
7 have been sent to that registrant or that address, which
8 could then be used for ID. The local registrars had
9 concerns of complying with HAVA identification. To comply
10 with HAVA, they had to have some additional identification
11 in order to satisfy HAVA for a first time voter. So there
12 was confusion about that.

13 THE COURT: They were satisfied in 2012 or 2013?

14 MR. HEARNE: That would be the 2012 law would have
15 raised those concerns.

16 THE COURT: All right.

17 MR. HEARNE: At the same time, there was also concern
18 because of a video that was being circulated which was
19 referred to as the Patrick Moran video. That will be
20 evidence that's presented to this Court that the experts
21 have considered. In that video, there's a discussion of a
22 Democrat operative explaining how you can commit vote
23 fraud, discussing with an operative how to commit vote
24 fraud by using utility bills, and other non-photo forms of
25 identification. This was the environment in which

1 Virginia adopted the 2012 -- excuse me, the 2013 law.

2 The significant changes in the 2013 law were the
3 elimination of non-photo identification, particularly the
4 non-photo ID card that raised those HAVA ID problems. The
5 other change in 2013 was that it actually added additional
6 forms of identification that allowed, for example,
7 identification -- student IDs, photo IDs from
8 non-government schools. It had --

9 THE COURT: All of which had to feature a photograph,
10 is that correct?

11 MR. HEARNE: That is correct. All of which had to
12 feature a photograph.

13 It also provided for the free photo ID requirement.
14 And if I could show the form for the free photo ID just to
15 indicate to the Court, this is in evidence, the simplicity
16 of obtaining a free photo ID. It is the bottom part of
17 the form is all that needs to be completed by the voter,
18 which would be the voter's first name, last name, middle
19 name if they have one, the last four digits of their
20 social security, and their birth date, and then they sign
21 it.

22 That form is -- upon filling out that form at their
23 registrar - there is 133 different registrars throughout
24 Virginia - the individual is given a free photo ID that's
25 sufficient to vote. If they don't -- if it's within 30

1 days of the election, they don't have to wait for it to be
2 mailed to them. They get it immediately, and can use it
3 the same day.

4 Now, somebody who doesn't have any ID at all --

5 THE COURT: Doesn't have any what?

6 MR. HEARNE: Any ID at all, as Mr. Spiva testified
7 some of his witnesses will be explaining, can go to the
8 polling place, still cast a provisional ballot, and still
9 have that ballot counted provided they provide such ID
10 before Friday of the same week.

11 Now, they can provide that ID either --

12 THE COURT: Friday succeeding Election Day?

13 MR. HEARNE: Correct. Succeeding Election Day.

14 THE COURT: Okay.

15 MR. HEARNE: So if it's just a case of somebody
16 forgetting their ID, then all they need to do is fax it
17 in, mail it in, send it in by e-mail, or hand deliver it
18 to the election officials, and their provisional ballot
19 will be counted. In fact, Mr. Spiva indicated, two of the
20 people that he intends to have testify, that's exactly
21 what they had happen.

22 If they didn't have any ID at all, they can go to the
23 general registrar, the registrar will issue that ID the
24 same day. That ID would then be sufficient for that
25 provisional ballot to be counted. That's the purported

1 burden that is suggested to be unconstitutional as I've
2 outlined the 2013 Virginia voter identification law.

3 Now, there's a list of different IDs - and I'm not
4 going to show the demonstrative - that count in Virginia.
5 When you compare Virginia to other states, you find that
6 Virginia allows many more forms of identification, and
7 provides an easier ability to obtain free identification
8 than states such as Wisconsin, or states such as Indiana,
9 where the voter law has been upheld. Virginia is more
10 generous, in other words, in terms of avoiding the
11 creation of a burden for that.

12 It includes photo IDs from employers that are in
13 Virginia, includes state, as well as private schools,
14 student photo identification. It includes a variety of
15 other non-Virginia-issued photo identification.

16 So it is -- and you heard discussion about how it is
17 several hundred thousand people may not possess this.
18 Well, that is a false statistic. And the experts will
19 testify to this, because that's based on a comparison with
20 driver's licenses. Well, a driver's license is just one
21 set of the ID. If you want a true comparison of how many
22 people actually possess one of the forms of ID that is
23 acceptable under Virginia's law, you have to consider a
24 much more broad universe of all the ID that are required
25 or allowed, which would include student ID.

1 The plaintiffs' own expert testifies as it relates --
2 Dr. Lichtman, that as it relates to student IDs, the
3 African-American members of Virginia actually have a
4 higher rate of enrollment, and are more likely to have
5 student IDs than non-minority students because of the
6 enrollment figure.

7 You have numerous military-issued IDs where all
8 government-issued IDs would satisfy the requirement. So a
9 lot of that has not been taken into account by the
10 plaintiffs' experts when they make this conclusion that
11 there's some substantial body of people that don't possess
12 an ID. And when we look at the actual results of the
13 election, the number of people who were unable to vote
14 because they lacked an ID, are very, very small. And even
15 those individuals cast provisional ballots, and those
16 provisional ballots would have been counted had they gone
17 and submitted the ID after the election.

18 You will also hear the testimony, Your Honor, of the
19 steps and measures Virginia has taken. Particularly,
20 Mr. Cortes will describe the steps to make sure everybody
21 does have access to a free ID. They've had mobile units
22 make available the ID to members of the community, which
23 is in addition to having to go to the actual registrar.
24 There's been outreach efforts that has been made to
25 support both informing people of the need for an ID, as

1 well as providing them the free ID, if they don't possess
2 one.

3 The Virginia election law also includes -- and when
4 we talk about the Section 2 Voting Rights Act complaint
5 that's been made, as the Court is aware, Section 2
6 requires us to consider the totality of the circumstances.
7 So when we consider the totality of the circumstances in
8 Virginia, it's not just what happens with an individual on
9 Election Day going into the polling place, but it's the
10 entire process by which Virginia has set up to administer
11 its elections to provide fair, safe elections that allow
12 and protect the right of every Virginian who's eligible to
13 vote. But at the same time, the Supreme Court has noted
14 in *Burdick*, to make sure that states' compelling interest
15 in preventing either vote fraud, or encouraging
16 confidence, are achieved.

17 So the election administration system in Virginia
18 also includes absentee balloting so people who are unable
19 to vote at the polling place can cast an absentee ballot
20 that will be counted.

21 So those who would say that it's a burden, and when
22 this Court evaluates the burden that is alleged by the
23 photo identification law in the 2013 law, --

24 THE COURT: An individual wishing to cast an absentee
25 ballot, are they also required to go to the registrar's

1 office to get that ballot?

2 MR. HEARNE: No. They can request that by mail.

3 THE COURT: Okay. All right.

4 MR. HEARNE: So somebody can request an absentee
5 ballot by mail. It will be mailed to them. They will be
6 able to vote that. If they've not previously provided one
7 of the HAVA forms of identification, they would provide
8 that.

9 THE COURT: Okay.

10 MR. HEARNE: So when we look -- speaking of the Equal
11 Protection claim that's been made, the Fourteenth
12 Amendment claim, we look at that, as plaintiffs have
13 admitted, under the *Burdick* standard. The *Burdick*
14 standard recognizes the states' compelling interest in
15 maintaining honest and orderly elections. Maintaining
16 public confidence in the election process.

17 And when we look at Virginia's 2013 law, and evaluate
18 it under that *Burdick* standard, what we find is that there
19 are a host of legitimate reasons why Virginia adopted it,
20 including the Carter-Baker recommendation, which the
21 Supreme Court found compelling in *Crawford*. The fact
22 that -- and experts will testify, that the concept of
23 photo identification enjoys very strong public support,
24 including, by public opinion, in Virginia. Voters,
25 including majority's minority voters, all support the

1 concept of adopting photo identification laws.

2 So when the General Assembly, and the legislators in
3 the General Assembly, adopted this law, they're in part
4 responding to the public opinion of their constituents.

5 The other states, as we indicated, when Virginia's
6 General Assembly adopted the 2013 law, they did in the
7 context of the environment at that point. They could look
8 at the other states that had adopted it. They could look
9 at the Supreme Court's opinion in *Crawford*. They could
10 look at the Carter-Baker Commission.

11 And as I noted, the evidence will testify, and the
12 experts will demonstrate, and the law itself when you just
13 read the different states' statutes will show, that
14 Virginia has a more lenient photo identification law than
15 other states. The legislators, when they adopted it, also
16 were aware of the recommendation of Carter-Baker, and
17 other sources saying that these kind of administrative --
18 election administrative measures increased public
19 confidence.

20 And then finally, particularly between the 2012 and
21 2013 law, one of the advantages is you have a uniform
22 standard for the administration of the election so that
23 every election official more easily can say here's a list
24 of IDs. We require these. We're having less discretion
25 than they would have had under the earlier 2012 law

1 because certain groups of voters were classified as
2 non-HAVA ID voters, others as HAVA ID voters. It made the
3 process less efficient.

4 So this is a racially neutral law that is
5 nondiscriminatory, that is a law that was adopted by the
6 Virginia General Assembly for a host of compelling
7 reasons, none of which are to disadvantage particular
8 minorities. The discussion of the Twenty-Sixth Amendment
9 in the young voter allegation that's been made by the
10 plaintiffs, the evidence that they present on that, Your
11 Honor, is very confusing between as to what --

12 THE COURT: Mr. Hearne, I want to hear whatever you
13 feel your evidence will show, but I want to reserve a lot
14 of these issues for final argument. There seems to be a
15 bit of confluence here between those two missions.

16 MR. HEARNE: Certainly. I will try to speak to your
17 evidence, Your Honor.

18 THE COURT: All right.

19 MR. HEARNE: And I was trying to put it into context
20 as to the legal standard.

21 THE COURT: Understood. I just don't want to argue
22 the legal issues at this point without a factual
23 foundation to support it before I hear the evidence.

24 MR. HEARNE: Certainly, Your Honor. What I will
25 refer to is the evidence.

1 Even the plaintiffs' own expert, Dr. Minnite, has
2 indicated that it's impossible to try to show any -- with
3 the social science available, a suppressive effect of a
4 voter ID requirement. In other words, one of the
5 principal premises the plaintiffs bring forward is that
6 there will be a suppressive effect on particular
7 minorities because Virginia adopted the 2013 law. The
8 evidence will not bear that out. In fact, their own
9 expert will say that we can't make that conclusion.

10 Their other expert, Dr. Lichy -- Lichtman. Excuse
11 me. Dr. Lichtman will say that he came to his conclusion
12 as to the intent of the legislature in adopting this
13 without considering the effect of the legislation. In
14 other words, he says -- and he also further said that
15 whether or not there was a suppressive effect in fact was
16 irrelevant to his conclusion that there was a suppressive
17 intent of the legislature. That kind of evidence will not
18 support a claim under the law for either a violation of
19 Equal Protection, or of Section 2 of the Voting Rights Act
20 claim.

21 Finally, and again going back to the actual
22 requirements of the law itself, the one thing that has not
23 been identified, and we, I know, briefed the issues of
24 standing, but the one piece of evidence that will not be
25 presented that we're not aware of is any witness who will

1 testify that they in fact were eligible to vote, and were
2 denied the right to vote, because of this law. And that
3 while they could say that they were inconvenienced, they
4 may have had to wait for an hour or two to get the photo
5 ID, the law does not deny anyone. And there has been no
6 one identified that we know of who has been denied the
7 right to cast a ballot by reason of this law when you
8 consider the totality of Virginia's election
9 administration laws. And for that reason, it fails to
10 satisfy the requirements of stating a claim.

11 THE COURT: Thank you, sir.

12 MR. HEARNE: Thank you, Your Honor.

13 THE COURT: Before we hear our first witness, I want
14 all witnesses who are present in the courtroom who have
15 not been designated as experts to please retire to the
16 witness rooms until you are called to testify in the case.
17 Experts may remain in the courtroom.

18 I want each side to look around the courtroom and
19 make sure all your fact witnesses have in fact retired to
20 the witness rooms.

21 Mr. Hearne, none of your witnesses are in the
22 courtroom, is that correct, sir?

23 MR. HEARNE: That is correct.

24 THE COURT: Mr. Spiva, none of your witnesses are in
25 the courtroom, sir?

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1 MR. SPIVA: Yes, Your Honor.

2 THE COURT: All right. Very well.

3 Who will be the plaintiffs' first witness?

4 MR. SPIVA: Josephine Okiakpe, Your Honor.

5 THE COURT: All right.

6 Ms. Okiakpe, if you would raise your right hand,
7 place your left hand on the Bible, and face the Clerk of
8 the Court. Can you do that okay?

9 MS. OKIAKPE: Yes.

10 THE COURT: Okay.

11 THE CLERK: You do solemnly swear that the testimony
12 which you are about to give, in this case, before this
13 Court, shall be the truth, the whole truth, and nothing
14 but the truth, so help you God?

15 MS. OKIAKPE: I do.

16 THE COURT: Have a seat on the witness stand.

17 MS. OKIAKPE: Thank you.

18 THE COURT: Are you ready to proceed?

19 MS. OKIAKPE: Yes.

20 THE COURT: Go right ahead with your examination.

21 MR. KAUL: Thank you, Your Honor.

22 THE COURT: Excuse me, Mr. Kaul.

23 Start off, if you would, by giving us your full name,
24 and spelling your last name for the benefit of my court
25 reporter, okay?

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MS. OKIAKPE: All right.

THE COURT: Go right ahead.

MS. OKIAKPE: My name is Josephine Leeks Okiakpe.

O-K-I-A-K-P-E.

THE COURT: All right.

Go right ahead with your examination.

Whereupon, **Josephine Okiakpe**, having been
duly sworn in, testifies as follows:

DIRECT EXAMINATION

BY MR. KAUL:

Q And just for the record, that ended with a P-E,
right?

A Yes.

Q Ms. Okiakpe, would you please tell the Court where
you live.

A I live at XXXXX XXXXXXXXXXXX Drive, XXXXXXXXXXXX,
Virginia.

Q And for the record, what is your race?

A African-American.

Q And do you consider yourself to be a member of a
political party?

A Yes.

Q What party is that?

A I'm a Democrat.

Q And is there a party whose candidates you typically

1 vote for?

2 A Typically, Democrats.

3 Q And do you have any health issues?

4 A Yes, I do.

5 Q Could you describe those for the Court, please.

6 A I have COPD, congestive heart failure, gout, and
7 arthritis, among other things.

8 Q All right. And what is COPD?

9 A It's -- it's a pulmonary disease that obstructs the
10 ability of the lungs to handle air properly. It's like my
11 lungs have a lot of fluid in them. And it makes me cough,
12 and I have to take breathing treatments, respiratory
13 treatments.

14 Q And do you have any trouble getting around?

15 A Yes, I do.

16 Q Do you own a car?

17 A No. Not now I don't.

18 Q Do any of your family members own a car?

19 A My daughter.

20 Q So if you need to get around by vehicle, how do you
21 do that?

22 A Well, my daughter and I share. If, for instance,
23 when her son has a basketball game, I have to drive her to
24 work and then I take him to his basketball game. And we
25 go home, and I pick her up at whatever time she gets off.

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1 THE COURT: So I assume you do have a valid Virginia
2 driver's license?

3 MS. OKIAKPE: No, I don't. I have a North Carolina
4 valid driver's license.

5 THE COURT: All right. Yes, ma'am.

6 Go right ahead.

7 BY MR. KAUL:

8 Q And that actually gets to my next question. Where
9 did you grow up?

10 A In North Carolina.

11 Q What year were you born?

12 A 1946.

13 Q And what -- where in North Carolina did you grow up?

14 A Clinton.

15 Q Can you describe what Clinton is like?

16 A It's just a tiny little town with just a little bit
17 of industry. Just a little bit. And where everybody
18 knows most everybody else, white or black.

19 Q And what kind of financial circumstances did you grow
20 up in?

21 A Well, we were poor but proud. My folks -- my
22 grandmother, for instance, was widowed at an early age and
23 she opened a restaurant and supported her children by
24 cooking and selling food. My dad followed in the same
25 pattern by opening a grocery store in our neighborhood.

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1 It was the only one in our neighborhood, so we had all
2 kinds of customers. But our family was a little bit
3 better off than the others because of the fact that we had
4 food all the time and we were able to share with others
5 that my dad raised up.

6 Always had a garden, and his uncles raised pigs and
7 chickens, and things like that. And we got things from
8 them. And then we raised vegetables in our garden. My
9 mom and dad canned.

10 And when people came wanting credit at the store, a
11 lot of times dad would send me and my brother to the
12 garden and he would -- we would harvest whatever was
13 available and, you know, give to the people so that he
14 didn't have to give them a lot of credit.

15 THE COURT: Why don't you go ahead to your next
16 question.

17 BY MR. KAUL:

18 Q Were there other African-American families in your
19 town?

20 A Yes.

21 Q Did you see what kinds of financial circumstances
22 they had?

23 A Yes, because of the fact that we had the neighborhood
24 store. And our street was kind of odd. Okay, the store
25 was kind of in the middle. The white people lived on down

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1 this way, and blacks lived this way. It was the projects
2 and the school that I went to.

3 And so a lot of people came and asked for credit or
4 asked for help in times of need. So I was privy to a lot
5 of inside workings of many families. And I learned at a
6 very early age you don't run your mouth. You see things
7 and you shut up.

8 Q Was your town -- I think you indicated this, but was
9 your town residentially segregated?

10 A Yes. Except for our street. Now, that was the only
11 street that I knew of that had blacks and whites living on
12 it. They didn't get together. The whites lived in this
13 section, the blacks lived in this section, but were still
14 all on the same street.

15 Q And did you go to public schools growing up?

16 A Uh-huh.

17 Q Is that yes, for the record?

18 A Yes.

19 THE COURT: Now, we're not dealing -- we're dealing
20 with laws in Virginia. And I understand that this lady
21 was raised in North Carolina, but we're not dealing with
22 the laws in North Carolina. We're dealing with Virginia.
23 So please stay in bounds here and keep on track. We have a
24 lot of witnesses and a lot of exhibits here, and please
25 confine your testimony to something that is arguably

1 relevant to the issues before the Court.

2 MR. KAUL: Your Honor, our position would be that
3 this is relevant for two reasons. First of all, there are
4 a lot of people in Virginia who grew up in neighboring
5 southern states in circumstances of discrimination, and so
6 that impacts their ability to do a number of things today,
7 which I think we'll talk about throughout the trial.

8 THE COURT: Well, you will be able to argue that in
9 the end. But since this is so far removed from Virginia,
10 and 2012 and 2013, and history is relevant, I agree with
11 you it's relevant, but I'm going to impose some reasonable
12 limitations here. So I think you can go ahead and inquire
13 into the community. That is fine.

14 But to go into, in a agranular fashion, a lot of the
15 details simply doesn't help this Court with respect to the
16 issues I've got to resolve. So with that preface, go
17 right ahead, sir.

18 MR. KAUL: Okay.

19 BY MR. KAUL:

20 Q The schools you went to, were they segregated?

21 A Yes.

22 Q Did you notice any difference between white and black
23 schools?

24 A Yes. The white schools had more books. They got
25 books more often then we did. And we got a lot of their

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1 books when they were through using them. When they got
2 new books, we got their older ones.

3 Q Let me move forward a little bit. What did you do
4 after graduating high school?

5 A I went to college.

6 Q And was that an integrated college?

7 A No. It became -- yeah, it -- I'll put it like this.
8 It was for the simple reason we had one white student on
9 campus.

10 Q What did you do after college?

11 A I came back to my home town, and I taught school for
12 several years. And then I went to graduate school.

13 Q And after you graduated, what did you do for a
14 living?

15 A I still continued to teach. I taught at Livingstone
16 College prior to my leaving North Carolina. Prior to my
17 leaving North Carolina.

18 Q You refer to leaving North Carolina. Can you explain
19 what you mean by that?

20 A Well, my daughter was working here in Virginia at
21 Channel 3 in Norfolk, and she had a baby. And she didn't
22 have anybody to help her with it, and so we - my mom and
23 I - decided, well, why not let's go and take care of her
24 and the baby and, you know, make sure she is able to
25 continue working without having to -- because she was

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1 making just a pittance at the time, and not enough funds
2 to pay child support -- I mean, child care. And so,
3 anyway, we just packed up and moved the family to
4 Virginia.

5 Q So when did you first move to Virginia?

6 A 2000.

7 Q And how long did you stay in Virginia the first time
8 you moved here?

9 A Three years.

10 Q And then what happened after?

11 THE COURT: I didn't hear her answer.

12 How long were you here the first time?

13 MS. OKIAKPE: Three years.

14 THE COURT: Yes, ma'am. Thank you.

15 Go right ahead.

16 A My mother had a stroke and she wanted to go home.
17 She wanted to be in her home. So I honored her wishes.
18 And when they told me that she was dying, I took her home
19 and she stayed there until she passed.

20 Q And when you say "home," are you referring to North
21 Carolina?

22 A North Carolina.

23 Q So how long did you stay in North Carolina?

24 A Okay. I stayed there until -- she died in 2003. And
25 I got a job and went to work and stayed there until 2010.

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1 December of 2010 is when we came back to Virginia. My
2 daughter wanted her son to be with her, so we came back to
3 Virginia.

4 Q Okay. So you moved back to Virginia in December of
5 2010?

6 A Yes.

7 Q Have you been here since then?

8 A Yes.

9 Q When you moved back to Virginia, did you register to
10 vote?

11 A Yes.

12 Q Why did you do that?

13 A Because I consider it a right and a privilege to be
14 able to vote. That's how -- you know, I don't have any
15 titles and I'm not anybody special, so that's how I can
16 put my little input into who is supposed to be speaking
17 for me or representing me, to vote for them or not to vote
18 for them.

19 Q I want to ask you about the 2014 election in
20 particular.

21 A All right.

22 Q Do you remember that election?

23 A Very -- very well.

24 Q Can you explain what happened when you tried to vote
25 in that election?

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1 A Well, I had been in and out of the hospital. And I
2 really wasn't cognisant of the change of requirements for
3 the photo ID. I had been sent my -- you know, the little
4 voting card that says you can -- you have the right to
5 vote.

6 Q Are you referring to a voter registration card?

7 A Voter registration card.

8 Q And I don't think you need to pull that out.

9 A I was not aware of the voter ID thing. But when I
10 went -- I always carry in my pocket my birth certificate,
11 my Medicare card, my social security. All of that's in my
12 wallet. So I pulled out all of that. And then I had a
13 bank statement.

14 Q And let me stop you. We need to go through this in
15 parts. So first of all, did you attempt to cast a ballot
16 in person in 2014?

17 A Yes.

18 Q And when you did that, what happened when you first
19 encountered the poll workers?

20 A Well, they -- they wanted to see my identification.
21 And I pulled out all the ID I had, which I thought was
22 more than sufficient.

23 Q And can you tell the Court which types of ID you
24 presented?

25 A My birth certificate, my social security card, my

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1 voter ID, the little card they sent me through the mail.

2 Q The registration card?

3 A The registration card. My old Virginia ID. But it
4 was expired. They told me they couldn't take it.

5 THE COURT: Your old Virginia registration card?

6 MS. OKIAKPE: No. No. I had the new one. I didn't
7 have the photo one.

8 THE COURT: Okay.

9 MS. OKIAKPE: But the one that I had from the DMV.

10 THE COURT: Oh, your driver's license?

11 MS. OKIAKPE: It wasn't a driver's license. It was
12 just an ID card.

13 BY MR. KAUL:

14 Q And you said that ID card was expired?

15 A It expired in 2008. Yes. And so they told me they
16 couldn't accept that, nor -- I had my Costco card, my BJ
17 card, my Sam's card, all those with pictures on them, but
18 they didn't take any of that stuff. They told me that it
19 wasn't acceptable.

20 Q Did you have a driver's license from North Carolina?

21 A Yeah. My North Carolina driver's license. I
22 presented that also. But it was from a different state,
23 so they couldn't take it.

24 Q Did you have any bank papers with you?

25 A Yeah, I had my bank statement. And I pulled out a

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1 plethora of stuff, and tried to give it to them, along
2 with the utility bill that had my name on it. And they
3 weren't having it. They weren't accepting any of that.

4 So, you know, I felt very frustrated and very upset.
5 And I've -- of course there was a room full of people, a
6 line all around, and here I am pulling out all this stuff.
7 And a few of the people looked at me kind of snickering.
8 I felt really bad, you know. And in fact, I went in the
9 bathroom and I cried a little bit because, again, I'm from
10 the era where voting was considered a privilege and a
11 right that we all ought to exercise. And my dad taught
12 me, and my mom -- we were NAACP members from childhood.
13 And so I really felt strongly about -- and I'm sorry.

14 Q Let me ask you about a different topic to switch to.

15 A Okay.

16 Q When you were unable to provide a photo ID, what
17 options were you provided?

18 A They told me to go to the -- to the -- to Manassas to
19 the voter place, voter registration place, and have a
20 picture made. And after that, I was sick for a couple of
21 days so I couldn't go. And my daughter finally --

22 Q Let me just -- I'll come back to that in just a
23 second.

24 A Okay.

25 Q Were you offered a provisional ballot?

1 A Yes.

2 Q And did you cast one?

3 A Yes.

4 Q So, I'm sorry, you were saying something about going
5 somewhere a couple days later?

6 A They told me -- well, it was several days later
7 before my daughter was off. And she took me to Manassas
8 to get the photo ID made.

9 Q So let me ask you about Manassas. First of all, can
10 you explain how Manassas plays into this?

11 A Well, that was where I had to go to get my photo ID
12 made because I had the, you know, the old voter
13 registration card with no picture on it. And so I just
14 presented that, and showed them my birth certificate and a
15 piece of mail, and they didn't ask me any questions. I
16 had less problem getting that photo ID made then I did
17 trying to vote. And that was the thing that really kind
18 of knocked me for a loop. I said, well, you know -- I
19 didn't quite understand that.

20 Q So let me ask you about the date that you voted. You
21 mentioned before you cast a provisional ballot. Did you
22 go that same day to Manassas?

23 A No.

24 Q Why not?

25 A Because I wasn't feeling very well after I left

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1 there. My blood pressure had gone up. My daughter was
2 not happy, and I didn't want to go. I didn't want to go.
3 I went on back home and got myself together.

4 Q And I think you said before you waited a few days
5 before you went. Why?

6 A Because my daughter didn't have -- she wasn't off for
7 several days. She is vacation relief for the job that she
8 works now, and she's only off when somebody who's supposed
9 to be there is there. She has to fill in for everybody.
10 So she works all shifts and schedules. And her schedule
11 this week is not what it is next week. So we don't ever
12 know until they give her her schedule. She has to ask off
13 if it's really important.

14 Q And why did it matter whether your daughter was off?

15 A Because she has to take me most of the time. See, I
16 can't go places by myself usually because of my health
17 issues and depending on how I'm doing at the time. We
18 have to share a car. I don't have a car anymore, and --

19 Q And how far is it to Manassas from where you live?

20 A Maybe about 15 miles.

21 Q So you can't walk that, right?

22 A No.

23 Q Is there public transportation that you take
24 sometimes in Manassas?

25 A I can't take it because I can't walk that far. I'd

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1 have to walk to a bus stop, and my breathing will not
2 allow me to go so far, but then I have to stop and rest.
3 And if I don't time it just right, or if I don't have the
4 rest time in between there, the bus is gone and I'm trying
5 to get to the bus stop. So I can't take the bus like
6 that. I have to be carried or drive myself.

7 Q All right. Now, you mentioned you did go to Manassas
8 eventually?

9 A Yes.

10 Q And did you say that you obtained an ID there?

11 A Uh-huh.

12 THE COURT: You have to answer yes or no so this
13 young lady can take it down.

14 A Yes. I'm sorry.

15 THE COURT: That's okay. Thank you.

16 Go right ahead.

17 MS. OKIAKPE: Please forgive me.

18 BY MR. KAUL:

19 Q And what form of identification did you present to
20 obtain that ID?

21 A I presented the old ID that they had sent me, and my
22 birth certificate. And I don't know. Oh, my driver's
23 license from North Carolina.

24 Q Did you present anything that you hadn't presented
25 when you went to vote at the polls?

CROSS-EXAMINATION OF JOSEPHINE OKIAKPE

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1 A I didn't present as much as I presented.

2 Q And did you get something as a result of showing --

3 A I got the picture ID done.

4 Q And did you then cure your provisional ballot?

5 A Yes.

6 Q Prior to the events you've been describing from 2014,
7 did you see any advertising about the voter ID law?

8 A No.

9 Q Did you hear any radio commercials about it?

10 A No.

11 Q Did you know that a picture ID was required?

12 A No.

13 Q How did this process impact your confidence in the
14 electoral system in Virginia?

15 A It kind of -- well, it made me feel very frustrated
16 and very -- I just felt as if maybe I didn't matter quite
17 as much as other people. It was -- it really kind of
18 undermined my confidence.

19 Thank you, Your Honor. No further questions.

20 THE COURT: Cross-examination.

21 MR. HEARNE: Thank you, Your Honor.

22 CROSS-EXAMINATION

23 BY MR. HEARNE:

24 Q Ms. Okiakpe, I want to make sure I pronounce your

25 name right. So if you could assist me and say it one more

CROSS-EXAMINATION OF JOSEPHINE OKIAKPE

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1 time, I'll make sure I try to do that.

2 A Okiakpe.

3 Q Ms. Okiakpe, you indicated that you share a car with
4 your daughter, is that correct?

5 A Yes.

6 Q And that you occasionally drive to your grandson's
7 basketball games?

8 A Yes.

9 Q About how far away are those games?

10 A Maybe a mile.

11 Q When you -- you indicated you had -- you possess a
12 North Carolina's driver's license still, is that correct?

13 A Yes.

14 Q Did I hear you correctly say that's still valid?

15 A Yes, it is.

16 Q Do you know when that expires?

17 A Yes.

18 Q When does that expire?

19 A March 15th. My birthday.

20 Q Of this year?

21 A This year.

22 Q This year. So March 15th of this year, do you plan
23 to renew that, or obtain a Virginia's driver's license?

24 A I plan to renew my North Carolina.

25 Q And to do that, do you know what you have to do?

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1 A Yeah. I just have to take the sign test.

2 Q I'm sorry. Say that again.

3 A I have to pass the sign test.

4 Q And that would be in North Carolina?

5 A Uh-huh.

6 Q You talked about your 2014 experience at the polling
7 place.

8 A Uh-huh.

9 Q And I understand that's a very emotional experience
10 to go through. But ultimately, was your provisional
11 ballot, to your understanding, counted?

12 A Yes.

13 Q So the ballot that you cast, even though you did have
14 to go through that experience with the identification, was
15 nonetheless counted, as you understand it?

16 A Yes.

17 Q You said your address was on XXXXX XXXXXXXXXX Drive,
18 is that correct?

19 A Uh-huh.

20 Q About how far is it from there to, say, the
21 Department of Motor Vehicles office, the Virginia
22 Department of Motor Vehicles office on Manville Road?

23 A Well, it's not on Manville. It's Caton Bridge Road,
24 I think is the name of it.

25 COURT REPORTER: I'm sorry. The name of the road

1 again, please.

2 THE COURT: Could you repeat your answer for my court
3 reporter.

4 MS. OKIAKPE: Oh. I think it's Caton Bridge Road.
5 C-A-T-O-N.

6 COURT REPORTER: Thank you.

7 BY MR. HEARNE:

8 Q Would that be within, say, five miles or less of your
9 home?

10 A Probably so.

11 Q And you said you went to the Office of Elections out
12 in Manassas to get the photo ID card, is that right?

13 A Yes.

14 Q And about how far is that from your home?

15 A All together, about 17 miles.

16 Q One way?

17 A Yes.

18 Q And if I understood you correctly, did you say that
19 it was easier to get that free photo ID card than it was
20 to vote the provisional ballot?

21 A Yes.

22 MR. HEARNE: I have no further questions.

23 THE COURT: All right.

24 Any redirect?

25 MR. KAUL: No, Your Honor.

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1 THE COURT: May she be excused?

2 MR. KAUL: Yes.

3 THE COURT: Ma'am, you may step down. You're
4 excused. Thank you very much for your testimony. We
5 appreciate you coming in.

6 MS. OKIAKPE: Thank you.

7 WITNESS STOOD ASIDE

8 THE COURT: Who'll be your next witness?

9 MS. BRANCH: Your Honor, the plaintiffs call Megan
10 Cotten to the stand, please.

11 THE COURT: Could you repeat that name for me?

12 MS. BRANCH: Megan Cotten.

13 THE COURT: Megan Cotten, okay.

14 Ms. Cotten, if you would be kind enough to raise your
15 right hand, left hand on the Bible, and face the Clerk of
16 the Court, please.

17 THE CLERK: You do solemnly swear that the testimony
18 which you are about to give, in this case, before this
19 Court, shall be the truth, the whole truth, and nothing
20 but the truth, so help you God?

21 MS. COTTEN: Yes.

22 THE COURT: Have a seat on the witness stand,
23 Ms. Cotten.

24 Ms. Cotten, would you please put your full name on
25 the record, and spell your last name for my court

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1 reporter.

2 MS. COTTEN: Yes. It's Megan Lynn Cotten,
3 C-O-T-T-E-N.

4 THE COURT: All right.

5 You may inquire.

6 Whereupon, **Megan Cotten**, having been
7 duly sworn in, testifies as follows:

8 **DIRECT EXAMINATION**

9 BY MS. BRANCH:

10 Q Good morning, Ms. Cotten.

11 A Good morning.

12 Q Could you please state your age for the record.

13 A I'm 32.

14 Q And where do you live currently?

15 A In Arlington, Virginia.

16 Q What is your address, for the record?

17 A XXXX XXth Street Xxxxx, Apartment X, Arlington,
18 Virginia, XXXXX.

19 Q How long have you lived in Virginia?

20 A I have lived in Virginia since 2008.

21 THE COURT: Since 2008?

22 MS. COTTEN: Yes.

23 THE COURT: Okay.

24 BY MS. BRANCH:

25 Q And where did you live prior to moving to Virginia in

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1 2008?

2 A I was in college at Ohio University in Athens, Ohio.

3 Q Where are you originally from?

4 A From Huntsville, Alabama.

5 Q And what do you do for work, Ms. Cotten?

6 A I work at the American Council on Education in their
7 public affairs team.

8 Q And where is that located?

9 A It's in DuPont Circle in Washington, D.C.

10 Q How long have you worked for the American Council on
11 Education?

12 A I was hired in December of 2014.

13 Q And where did you work immediately prior to being
14 hired?

15 A The Hatcher Group. It's a public relations firm in
16 Bethesda, Maryland.

17 THE COURT: Could you spell the name of that group
18 for my court reporter, please.

19 MS. COTTEN: Sure. It's three words. The Hatcher,
20 H-A-T-C-H-E-R, and then Group.

21 THE COURT: Okay. Thank you.

22 Got right ahead.

23 MS. BRANCH: Thank you, Your Honor.

24 BY MS. BRANCH:

25 Q Have you ever worked in federal or state government?

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1 A No.

2 Q Have you ever been a member of the military?

3 A No.

4 Q Do you have a car, Ms. Cotten?

5 A I do.

6 Q And do you drive regularly?

7 A I do not. It sits in the garage.

8 Q About how often would you say you drive?

9 A Probably only every couple of months if I need to

10 take an out of town trip.

11 Q What mode of transportation do you typically use to

12 get around?

13 A I rely on the bus and train, or the metro system.

14 Q Did you have to show a photo ID to get into this

15 courthouse today?

16 A Yes.

17 Q And what type of ID did you show?

18 A My Alabama driver's license.

19 Q Ms. Cotten, are you registered to vote in Virginia?

20 A Yes.

21 Q And when did you first register to vote?

22 A In 2008.

23 Q And why did you register to vote?

24 A I really believe voting is important. And I've

25 always tried to vote in major elections. I was a

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1 journalism major, and I've always really believed in the
2 Democratic process.

3 Q Do you vote in Virginia?

4 A Yes.

5 Q And about how often would you say you vote?

6 A I try to vote in every major election, and I try to
7 vote in every primary as well.

8 Q Do you consider yourself to be a member of any
9 political party?

10 A Yes. I'm a Democrat.

11 Q And is there a party whose candidate you typically
12 vote for?

13 A Yes. The Democratic Party.

14 Q So we're going to focus on the 2014 election. And to
15 start out, I want to ask you a few questions about the
16 types of ID that you had in 2014, and the types of IDs
17 that you currently have. So at the time of the 2014
18 election, did you have any type of ID that had your photo
19 on it?

20 A Yes. My Alabama driver's license.

21 Q And did you have any other types of IDs with your
22 photo on it?

23 A No.

24 Q Did you have a photo ID issued by the DMV?

25 A I had an expired state ID card. I had originally

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1 tried in 2009 to get a Virginia driver's license. I tried
2 five times. I was eventually told that due to
3 miscommunication between the Alabama DMV and the Virginia
4 DMV, that they -- because they could not call each other,
5 they could only communicate via fax, and it was showing a
6 pit of about a thousand faxes to which they said they were
7 not checked, that they were unable to get the final
8 document I would need to get a Virginia driver's license,
9 so instead I was issued a Virginia state ID card.

10 THE COURT: Hold on just one second. Could you
11 explain that in a little more detail? I couldn't hear all
12 your testimony.

13 MS. COTTEN: Sure.

14 THE COURT: You went down, you passed the test, is
15 that right?

16 MS. COTTEN: Well, I never took a test in Virginia.
17 I already had a Alabama driver's license. But I had lost
18 my Alabama driver's license, and so I decided that it was
19 time to get a Virginia driver's license. So I compiled
20 all the necessary documents, went down to the DMV to apply
21 for a Virginia driver's license. I had everything I
22 needed except for a driving record. I had actually bought
23 a driving record on-line that was fraudulent, so it didn't
24 count, apparently. I thought I had everything I needed.

25 THE COURT: You produced a fraudulent --

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1 MS. COTTEN: Well, it was like a scam cite.

2 THE COURT: Pardon me?

3 MS. COTTEN: I thought I bought my driving record off
4 the Internet.

5 THE COURT: So Virginia DMV would not honor that,
6 obviously?

7 MS. COTTEN: They would not honor it. Yeah.

8 THE COURT: Okay.

9 MS. COTTEN: So they said in order for me to get a
10 Virginia license, I would need to produce the final
11 document, which is my driving record.

12 So I actually had my sister, who lives in Alabama, go
13 down to the Alabama DMV and have them fax it over. She
14 tried five separate times. They claimed that they did not
15 get the fax.

16 One time I was called at work by the Virginia DMV,
17 asked to come down right away. That they had just
18 received the fax finally. So I took off from work, went
19 down to the Virginia DMV, got there, and I said, "Okay,
20 where's the fax?

21 And they said, *"What are you talking about? Who*
22 *called you?"*

23 I said, *"I don't know."*

24 And so he said, *"Well, we don't have it."*

25 So, the bottom line is I had to get a flight pretty

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1 soon because I needed some form of ID, so he -- or they
2 give me a Virginia ID card.

3 THE COURT: Okay.

4 BY MS. BRANCH:

5 Q And so how many times did you yourself have to go to
6 the Virginia DMV to try to get a Virginia driver's
7 license?

8 A I went five separate times.

9 Q And did you have to take off work to do that?

10 A I did. My boss was not happy with me. I was told
11 that I could no longer spend anymore time on this project.

12 Q And so you mentioned you were given a DMV photo ID?

13 A Yes.

14 Q At the time of the 2014 election, was that current?

15 A No. It had expired in September of 2013.

16 Q Do you currently have a Virginia driver's license,
17 Ms. Cotten?

18 A It should be in the mail. I went to the DMV about a
19 month ago. I did get, you know, a printout saying I now
20 have a Virginia license, but it hasn't arrived.

21 Q And do you remember the date of the first time that
22 you tried to apply for a Virginia driver's license?

23 A It was in November of 2009.

24 Q At the time of the 2014 election, did you have a
25 passport?

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1 A I did not. I had applied for a passport. The State
2 Department had misclassified my paperwork as someone who
3 was born outside of the United States, so I was sent a
4 letter asking for additional documentation, unfortunately,
5 none of which applied to me. I think like my travel
6 history, my family Bible history, things that I just
7 couldn't produce. I had a certain amount of time to
8 respond, and then was told I'd have to start all over. So
9 I waited, tried to figure out ways to get around it, but
10 ultimately had to apply again and pay all over again.

11 Q And how much did you have to pay to get a passport?

12 A It was \$140 each time. So \$280 in the end.

13 Q And when did you first try to get a passport?

14 A It was in the summer of 2014.

15 Q And do you now have one?

16 A Yes. It came in May 2015.

17 Q What types of documentation did you ultimately have
18 to show to get your passport?

19 A Well, yeah, it was extensive. I called the State
20 Department ahead of my appointment, and they said just to
21 be sure -- they give me a list of up to 31 supporting
22 documents I needed to provide. I obviously didn't have
23 all 31, but I provided every single document that I could
24 off that list the second time I applied because I wanted
25 to apply to avoid applying a third time.

DIRECT EXAMINATION OF MEGAN COTTEN

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1 Q And what type of documents were those?

2 A Student transcripts, my lease information, my
3 renter's insurance, my photo ID badge from my job at the
4 American Council on Education, my birth certificate, my
5 social security card. On and on.

6 Q You just mentioned your photo ID badge from the
7 American Council of Education. Did you have that ID at
8 the time of the 2014 election?

9 A I did not. The Hatcher Group did not have photo ID
10 for its staff.

11 Q Let's shift and talk, actually, about the 2014
12 election. And at that time you were employed by The
13 Hatcher Group, is that correct?

14 A That's correct.

15 Q And where is The Hatcher Group located?

16 A It's in Bethesda, Maryland.

17 Q And were you living in Arlington at the time?

18 A Yes, I was.

19 Q And how did you get to work, Ms. Cotten?

20 A I walked to the metro, and took the train to
21 Bethesda. And then I walked from the metro to The Hatcher
22 Group.

23 Q And about how long did it take you to get from where
24 you lived in Arlington to where you worked in Bethesda
25 every day?

DIRECT EXAMINATION OF MEGAN COTTEN

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1 A Anywhere from an hour and 20 minutes, to an hour and
2 a half, or even more depending on the trains.

3 Q Did you attempt to vote in the November 2014
4 election?

5 A Yes, I did.

6 Q And where did you go to vote?

7 A I went to my neighborhood polling place I had been
8 using for years, the library right down the street from my
9 house.

10 Q And how did you get to the polls on election day?

11 A I walked. It only took about like five to 10
12 minutes.

13 Q About what time would you say you got to the polls?

14 A Probably near 8:00.

15 Q Is that 8:00 in the morning?

16 A Yes.

17 Q And did you have to take any time off work in order
18 to go to the polls?

19 A I did. You know, it was understood at my job that
20 you could either take the morning or you could take the
21 night. You could take a certain amount of time to vote,
22 but that you'd have to be making up that time at work
23 either way.

24 Q And why was that?

25 A We worked on a billable system, and it was a very

DIRECT EXAMINATION OF MEGAN COTTEN

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1 strict work environment. It was just an understood
2 environment that you just didn't leave early, and you
3 didn't arrive late unless there was a very good reason.
4 And voting was one of those reasons they allowed us to
5 either arrive late or leave early.

6 Q About how much time would you say you were allowed to
7 take off work to go vote?

8 A I mean, you know, I tried to get there early. It was
9 a long line. I was probably a little over an hour late to
10 work. So I had to stay an hour later.

11 Q So what happened when you got to the voting location?

12 A You know, everything was fine. I got -- until I got
13 to the place where you have to show your documents. And I
14 brought what had always worked for me, which is my Alabama
15 State driver's license and my utility bill showing where I
16 lived in Arlington. And I was told that that wasn't going
17 to be enough documentation in order to vote that day. I
18 was given a list of additional documents I could provide,
19 but none of them really applied to me. I wasn't in the
20 military, I wasn't a student, I didn't work for the
21 federal government, so I didn't have any of those
22 documents.

23 I was asked very loudly if I had a passport, in which
24 I was going through the passport situation. I said I
25 applied for one, but I didn't have one. And in a very

DIRECT EXAMINATION OF MEGAN COTTEN

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1 loud conversation in a quiet room, you can imagine,
2 everyone is turning around to see what the commotion is.
3 I'm in Arlington, so it's a bunch of wealthy, white,
4 well-traveled people all looking at me, and the fact that
5 I don't have a passport, it was pretty humiliating, to be
6 honest.

7 And I looked at the other poll workers who at this
8 point had turned to see what was going on, and they were
9 listening to the conversation to see what they would say,
10 but they didn't say anything. And she said, "*I'm sorry.*
11 *Next in line. You can't vote.*"

12 So I started to walk out, and I started looking at
13 other polling workers to see if they were going to say
14 something, but they didn't, so I left.

15 Q And so you mentioned earlier that you had a
16 DMV-issued photo ID?

17 A Yes.

18 Q Did you have that with you at the polls in 2014?

19 A No. It was in a drawer somewhere. I didn't think I
20 needed it.

21 Q And was it your understanding prior to going to vote
22 that the types of IDs that you were planning to present
23 would be acceptable?

24 A Yes. They had always worked before.

25 Q And were you aware of the photo ID requirement prior

DIRECT EXAMINATION OF MEGAN COTTEN

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1 to going to vote?

2 A No, I wasn't.

3 Q Had you seen any TV adds or newspaper adds about the
4 photo ID law?

5 A No. And I do read multiple newspapers a day. I
6 usually try to read the Washington Post, the New York
7 Times. I hadn't seen anything.

8 Q Do you read any Virginia newspapers regularly?

9 A You know, I usually read the Washington Post as my
10 newspaper.

11 Q So you mentioned that you left the polling place
12 after you were told that you didn't have acceptable ID.
13 Were you offered a provisional ballot before you left?

14 A No, I was not.

15 Q Were you aware of the provisional ballot process in
16 2014?

17 A No, I was not.

18 Q And can you describe for the Court your interactions
19 with the election officials on election day.

20 A It was very hard to be singled out. I felt very
21 singled out in a room full of people that maybe felt, you
22 know, better than me and that they somehow had, you know,
23 passports or were somehow more prepared. Like I said, it
24 was a very quite room. And this person was very, I felt,
25 intentionally loud about the fact that I didn't have what

1 I needed.

2 And when I let them know I didn't have a passport,
3 the shock that was expressed by this person was very loud
4 that I didn't have a passport. They were very surprised.
5 It just made me, you know, feel like there was something
6 wrong with me that I didn't have a passport and I was
7 embarrassed and I just wanted to get out of there.

8 Q Ms. Cotten, were you ultimately able to cast a ballot
9 on Election Day in 2014?

10 A No, I wasn't.

11 Q Now, after you left the polling place, what happened?

12 A Well, you know, I was in public relations, and I was
13 aware that public officials monitor their social media
14 accounts, and especially on a day like this. And I knew
15 the Secretary of State would be monitoring his, so I
16 looked him up on Twitter and tweeted at him and let him
17 know what had happened to me. I wanted him to be aware of
18 what this consequence of this new law was, which was the
19 fact that people were being turned away from the polls.

20 Q And you said you Tweeted at him. For those persons
21 in the courtroom who are not as familiar with Twitter, can
22 you explain what you mean by that?

23 THE COURT: I think most of us are familiar with it,
24 for the record.

25 MR. SPIVA: She's talking about me, Your Honor.

DIRECT EXAMINATION OF MEGAN COTTEN

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1 A I looked up his user handle, and I used it, and I
2 Tweeted at him so he would see it in a Tweet.

3 Q And when you say "he," you're talking about the
4 Secretary of the Commonwealth?

5 A Yes.

6 Q And do you remember his name, by chance?

7 A Levar Stoney.

8 Q Now, did Mr. Stoney, Secretary Stoney, responded to
9 your Tweet?

10 A He did. He responded to my Tweets. He ultimately
11 private messaged me on Twitter and asked me for my e-mail,
12 which I gave him. Somebody from his staff followed up
13 with me and gave me a call and explained that I should
14 have been offered a provisional ballot, and that there
15 were additional steps that I would need to take even if I
16 did get a provisional ballot. But because I knew that I
17 wasn't going to be able to go back to my polling place, I
18 didn't inquire about those additional steps.

19 I wasn't really aware of exactly what he was talking
20 about. I heard him say something about the registrar's
21 office. Of course, I don't know where that would be, so I
22 didn't ask him to clarify because I just told him it
23 wasn't going to be possible for me to make it back to my
24 polling place before it closed. But I just wanted him to
25 be aware of what had happened so that they could track it.

DIRECT EXAMINATION OF MEGAN COTTEN

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1 Q And why wasn't it going to be possible for you to get
2 back to the polling place before it closed?

3 A You know, I mean, I had to stay and make up the hours
4 that I missed and I couldn't leave early.

5 Q And do you know what time the polling place closed?

6 A At 7:00.

7 Q And about what time did you leave work that day?

8 A I didn't leave until after 6:30.

9 Q And how long would it have taken you to get from work
10 to the polling place at about that time?

11 A If everything was running smoothly on the metro, it
12 would be an hour and 10 minutes to the metro and walk.

13 Q Ms. Cotten, did you attempt to vote in the 2015
14 election?

15 A No, I didn't. I -- finally, I was planning on voting
16 with my passport that I got in May, but we were also
17 moving that month and my passport ended up at the bottom
18 of a box, which I just located a couple weeks ago,
19 actually. So I -- you know, election year rolled around
20 and I thought I knew where my passport was. I went to go
21 grab it and it wasn't there, so I just didn't have the
22 documents I needed to go vote, so I didn't.

23 Q And, you know, during the 2015 election, around that
24 time, were you aware of the fact that you could have
25 gotten a photo ID from the registrar's office?

DIRECT EXAMINATION OF MEGAN COTTEN

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1 A You know, I had never heard of this free ID. When I
2 sat in the opening statements, I saw the worksheet you
3 have to fill out for it. But I had never heard of someone
4 saying a free ID to vote. You know, if someone had
5 mentioned it, I think I would have just thought they were
6 talking about a voter registration card, which I had.

7 But, no, it wasn't on my radar. I had no idea what
8 this free ID thing is, or was. And I didn't know anybody
9 else who knew either.

10 Q Had anyone ever explained to you either when you were
11 in the polling place, or when you received the follow-up
12 from the Secretary of the Commonwealth's office, anything
13 about the free photo ID?

14 A I think the staffer, in retrospect, now that I'm
15 hearing that you have to go to the registrar's office to
16 get it, I think he was probably trying to tell me about
17 it. But in my mind, at the time, he was just telling me
18 it was part of the step that I'd have to go to the
19 registrar's office and get additional documents, or
20 whatever, and he didn't refer to it as a free ID. And
21 this whole free ID thing, I don't -- I didn't know that
22 vernacular until I started talking to you guys about this.

23 Q Do you know where the closest registrar's office is
24 to where you live?

25 A I don't.

DIRECT EXAMINATION OF MEGAN COTTEN

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1 Q Ms. Cotten, what ID do you show at airport security
2 when you travel by plane?

3 A My Alabama driver's license.

4 Q Has it always worked?

5 A Yes.

6 Q What type of ID do you show at a store when you're
7 using your credit card and they ask for proof of identity?

8 A My Alabama driver's license.

9 Q And has it always worked?

10 A Yes.

11 Q How did the fact that you were not able to use your
12 ID in 2014 to vote make you feel?

13 THE COURT: She's already testified to that twice.

14 MS. BRANCH: Okay.

15 BY MS. BRANCH:

16 Q Did the fact that you were not able to use your
17 2014 -- or your ID to vote in 2014 affect your view of the
18 Virginia election system at all?

19 A Well, I mean, I felt like if this is happening to
20 somebody like me who reads the news every day, who's
21 well-informed, who votes regularly at the same polling
22 place that I've been going to for years, I just felt like
23 if it's happening to me, it's happening to other people.
24 And that made me really sad for the state of affairs in
25 Virginia.

Cotten - cross

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1 Q Is it important for you to vote, Ms. Cotten?

2 A It is. I mean, I feel like in this day and age, you
3 know, people use social media to complain a lot, but it's
4 really our only voice and our only chance to try and
5 change things politically.

6 MS. BRANCH: No further questions, Your Honor.

7 THE COURT: We're going to take a 10-minute recess.

8 We'll come back and proceed with cross-examination.

9 You may step down, Ms. Cotten, for 10 minutes. Don't
10 discuss your testimony with any other witness.

11 We'll stand in recess for 10 minutes.

12 (Recess taken.)

13 (Gil Halasz is now the court reporter.)

14 THE COURT: Take your seat on the witness stand,
15 please.

16 CROSS EXAMINATION

17 THE COURT: All right. You may inquire.

18 BY MR. FINBERG:

19 Q Thank you very much.

20 I am Dana Finberg, and I am one of the attorneys
21 representing the defendants. I just have a few questions
22 for you.

23 A Okay.

24 Q You have lived in Virginia since 2008; that is right?

25 A Yes.

1 Q Okay.

2 And you are Caucasian, are you not?

3 A Yes.

4 Q And at the time of the 2014 general elections you
5 were 30 years old; is that about right?

6 A Yes.

7 Q And you own a car?

8 A I do.

9 Q And you have been a Virginia resident since 2008?

10 A That's correct.

11 Q I am unclear on part of your earlier testimony about
12 at the time you went to the polls in 2014. Did you have
13 an ID at that time?

14 A I had an expired Virginia ID card starting in 2013.

15 Q Did you mention, I think at some point during direct
16 testimony that you had some DMV ID that was in the drawer
17 when you went to the polls?

18 A Right. I didn't bring it with me. That is what I
19 was talking about.

20 Q You are talking about the expired one. Okay. I want
21 to be clear.

22 A Yes, yes.

23 Q Okay.

24 When you went to the polls in 2014 you testified that
25 you got to the front of the line and the poll worker

Cotten - cross

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1 turned you away because you didn't have the right form of
2 ID; isn't that right?

3 A That's correct.

4 Q And when you went there you were dealing with a local
5 poll worker in Arlington County?

6 A Yes, I would assume so.

7 Q You voted in Arlington County?

8 A Yes, yes.

9 Q Did you ask anybody there at the time what you could
10 do to obtain an ID?

11 A I didn't know the questions to ask, because I didn't
12 understand that there was another ID to be had.

13 Q Okay.

14 After you were turned away at the polls, you said
15 that you tweeted the Secretary of the Commonwealth?

16 A That is true.

17 Q And as a matter of fact that very same day, the date
18 of the election, you were contacted by the Department of
19 Elections, weren't you?

20 A Yes.

21 Q And somebody by the name Myron McClees, Department of
22 Elections, contacted you, reached out to you?

23 A Yes.

24 Q Called you by phone?

25 A Yes.

Cotten - cross

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1 Q And explained to you what the process was, right?

2 A Yes. He told me I had to go get an original valid
3 permit for my polling place.

4 Q You didn't feel like you were blown off by the
5 Department of Elections of your concerns?

6 A No. I thought they were very responsive.

7 Q You said in 2015 you attempted to vote, or you -- or
8 didn't attempt to vote because you had a passport but it
9 was packed away somewhere?

10 A Exactly.

11 Q But you had a valid passport at the time?

12 A I did.

13 Q You are currently living in Arlington, right?

14 A Correct.

15 Q And you lived at XXXX XXth Street?

16 A Correct.

17 Q How did you get to Richmond to today?

18 A I drove my car.

19 Q And that is over a hundred miles, right?

20 A Yes.

21 Q Give or take a few?

22 A Okay. Yes. I don't know.

23 Q And where did you live at the time of the 2014
24 elections?

25 A In Arlington, Virginia.

Cotten - cross

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1 Q Were you at XXX XXst Street at that time?

2 A Yes, I was.

3 Q Okay.

4 Are you familiar with the Office of Elections on
5 Clarendon Boulevard?

6 A No.

7 Q You don't know where Clarendon is in Arlington?

8 A Yes.

9 Q About four miles from where you live, right?

10 A Yes. I mean, yes.

11 Q And are you familiar with the DMV office on Four Mile
12 Run in Arlington?

13 A Yes.

14 I went there to get my Virginia state --

15 Q Okay. Also about four miles from where you lived at
16 that time?

17 A That's correct. Yes.

18 Q Is there anything that is going to prevent you from
19 voting in the up-coming elections?

20 A No.

21 Q As a matter of fact, you now have three forms of
22 valid identification to vote in the up-coming election; do
23 you not?

24 A Yes.

25 Q You have a Virginia driver's license?

Cotten - cross

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1 A Don't ask me that. Now, yes, driver's license.

2 Q You have passport?

3 A I do.

4 Q And you have an employer ID with the photo on it,
5 now?

6 A I don't -- I am not exactly sure if it is current,
7 but an ID badge without the name of my company on it. I
8 am not sure if that would work or not, but I don't need it
9 to vote.

10 Q Because you are going to have a passport and driver's
11 license.

12 A Yes.

13 Q You said that you identify as Democrat.

14 A That is right.

15 Q That is true? Ever filled out an application to join
16 the Democratic party?

17 A I am not sure what application you would fill out to
18 join the Democratic party. I don't know that. I have no
19 idea.

20 Q Have you ever filled out an application thinking that
21 you were applying to join the Democratic party?

22 A It doesn't ring a bell.

23 Q Ever paid dues to the Democratic party?

24 A Definitely not.

25 Q Ever gotten a membership card from the Democratic

1 party?

2 A No.

3 MR. FINBERG: I don't have any further questions,
4 Your Honor.

5 THE COURT: Any redirect?

6 May she be excused, Mr. Finberg?

7 MR. FINBERG: Yes.

8 MR. SPIVA: Yes, Your Honor.

9 THE COURT: You are excused to go. Thank you for
10 coming today. We appreciate it.

11 (Witness stood aside)

12 THE COURT: Who is the next witness?

13 MS CALLAIS: Jennifer Tidd.

14 THE COURT: T-I-D-D. Okay.

15 Raise your right hand, place your left hand on the
16 Bible and face the Clerk of the Court, please.

17 JENNIFER TIDD

18 WAS SWORN AND TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 THE COURT: Would you please give us your full name,
21 and spell the last name for the court reporter, please?

22 THE WITNESS: My name is Jennifer Tidd. Last name T
23 as in Thomas, I-D-D.

24 THE COURT: Thank you.

25 You may inquire.

1 BY MS CALLAIS:

2 Q Ms. Tidd, where do you live?

3 A We live in Reston, Virginia.

4 Q What is your address?

5 A It is XXXXX Xxxxx Lane.

6 Q You said "we." Who do you live with?

7 A My husband and my four sons. Alex, 24. Lucas is 20.

8 XXXXXXXX is nine. And Xxx is six.

9 Q Ms. Tidd, are you employed currently?

10 A I work part time while my two younger children are in
11 school. I have to be home for my severely impaired
12 nine-year-old, for his school bus because he takes a lot
13 of additional care.

14 Q You said severely impaired. What impairment is that?

15 A Both he and my 24-year-old son are autism spectrum.

16 Q Are you involved in any community organizations?

17 A Yes, I am. I am involved with the Virginia Autism
18 Project. We work in state advocacy for the 14,000
19 autistic children in Virginia for educational and health
20 care reform.

21 Q Have you ever done any type of voter registration
22 work?

23 A Yes, I have done voter registration every election
24 cycle since I moved to Virginia in 1994.

25 Q Now, Ms. Tidd, you mentioned that your oldest son is

1 on the autism spectrum.

2 THE COURT: You have to speak louder and more clearly
3 so the court reporter can understand you.

4 Why don't you pull the mic to you.

5 MS CALLAIS: No, it is me.

6 THE COURT: Pull the microphone a little closer,
7 okay?

8 Go ahead.

9 BY MS CALLAIS:

10 Q Ms. Tidd, you mentioned that your older son is on the
11 autism spectrum?

12 Please tell the Court his name.

13 A His name is Alex.

14 Q And what is the last name?

15 A Alexander Highland.

16 Q And today you are here to testify about the
17 experience that you had when you went to vote with him in
18 2014?

19 A Right.

20 Q Can you explain to the Court why you are here
21 testifying about your experience today?

22 A Because with autistic people about 40 percent of them
23 are entirely non-verbal, which is my son, who is nine
24 years old. He speaks via sign language.

25 About 25 percent more autistic people are verbal, but

Tidd - direct

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1 considered non-verbal because their communication skills
2 are so impaired, and their inter-social skills are so
3 impaired. And Alex is in that 25 percent margin.

4 Q And being in that 25 percent margin does that affect
5 his ability to testify in court or speak in front of
6 people?

7 A Absolutely. Actually he was going to come with me
8 today, but he felt very anxious. He is also medicated for
9 anxiety having to do with autism and his lack of
10 inter-communicational skills, his ability to relate out in
11 the world. So he didn't really feel comfortable coming
12 here today.

13 Q Are you registered to vote?

14 A Yes.

15 Q Is that here in Virginia?

16 A Yes, I am.

17 Q Why did you register to vote?

18 A I was raised by a military officer and my mother, who
19 strongly believed that your vote was your voice. And that
20 voting in every single election possible was your duty as
21 an American.

22 Q And elections you instilled in your family?

23 A Absolutely.

24 Q Are your children registered to vote?

25 A Yes, they are. The two who are eligible, yes.

1 Q And, Ms. Tidd, do you also vote in Virginia?

2 A Yes, we do.

3 Q You specifically go to the polls alone or with your
4 family members?

5 A Now that my son Alex is eligible to vote, I take him
6 with me.

7 Q Why is that?

8 A Because he keeps -- firstly, he can't drive because
9 of anxiety and autism. And that then he also needs help
10 at the polls to communicate with the poll workers, get it
11 valid, and everything else.

12 Q And, Ms. Tidd, do you consider yourself to be a
13 member of any political party?

14 A Yes, I'm a member of the Democratic party.

15 Q And you typically vote a Democrat ticket?

16 A Yes.

17 Q And I would like to focus on 2014 elections. Did you
18 vote in the 2014 general election?

19 A Yes, I did.

20 Q Did your son Alex accompany you to vote?

21 A Yes, he did.

22 Q Where did you vote in 2014?

23 A We voted in the Hunter Mill precinct in Reston,
24 Virginia.

25 Q About what time did you arrive at the polls?

Tidd - direct

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1 A We were running late that day because I got caught in
2 rush hour and we couldn't go until after work. So I
3 called home and told Alex to be ready to run out the door
4 as soon as I got home. He was a bus boy at a restaurant.
5 So he actually had to take off a little bit at the
6 beginning of his shift to meet me after I was running
7 late.

8 Q What happened when you arrived at home?

9 A I immediately asked him if he had his voter
10 identification card.

11 THE COURT: Did he have what?

12 THE WITNESS: His Virginia identification card.

13 THE COURT: Okay. Go ahead.

14 BY MS CALLAIS:

15 Q And what type of Virginia identification card, did he
16 have?

17 A He has a Virginia State ID.

18 Q When did he get that ID?

19 A He got that just before he went to college.

20 Q About when was that?

21 A That was in 2010, just after he graduated from high
22 school.

23 Q Is Alex still in school?

24 A He is not. Even though his grade point in high
25 school was very high, he wasn't able to -- academically he

Tidd - direct

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1 could hack it, because he is very intelligent, but with
2 all the anxiety and the inability to advocate for himself
3 he was not able to live independently at college.

4 Q So in 2014 did Alex have an identification card?

5 A He did not.

6 THE COURT: I couldn't hear the question.

7 MS CALLAIS: Did Alex have a student ID card?

8 THE COURT: Student ID card.

9 Go ahead.

10 BY MS CALLAIS:

11 Q Ms. Tidd, did you accompany Alex to get his
12 Virginia-issued photo ID card?

13 A Yes, I did.

14 Q Why is that?

15 A Because he, dealing with day-to-day things like that
16 where he has got to interact with someone else, sometimes
17 he can, most of the time he can't. He needs help. He is
18 impaired socially that way.

19 Q About how long did it take to get the photo ID card?

20 A Actually we were surprised because I thought it would
21 be a lot shorter because it was just getting an ID, not
22 taking the driver's test or getting a license. But it was
23 a day where there was a very long line and we had to take
24 the number and we waited for quite a while, a couple
25 hours, before we got out.

1 Q When you say got out, is that -- are you referring to
2 the DMV?

3 A With the ID yes, before we got the ID.

4 Q Where did you bring Alex to get that ID?

5 A I brought him to the Department of Motor Vehicles.

6 Q Do you remember about how far that is from your home?

7 A It is near my old job, so it is about six miles, six
8 and a half miles from my house.

9 Q Is that a walkable distance?

10 A I don't think so. You know 13-mile round trip. I
11 think that is a little far.

12 Q Is that a distance that can be reached by public
13 transportation?

14 A That -- for him, also, a lot of times on the bus the
15 interaction of getting on and off the bus it is just
16 easier to drive him. Also, that bus trip is, I don't
17 know, it would be over an hour, probably hour and 15 or
18 hour and 20 minutes. There would be a transfer. It just
19 seems like a lot of hassle when he can be driven.

20 Q Going back to 2014 when you were at your home, you
21 mentioned that you told Alex to find his ID. Why did you
22 do that?

23 A Because his skills of, you know, his functional
24 skills of life are terrible. I mean, he is a vociferous
25 reader, reads a book a day, but as far as his functional

Tidd - direct

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1 skills to get through a day they are lacking. So it
2 is pretty sure he wouldn't have it. So -- and as it
3 turned out he couldn't find it. So, at that point it was
4 very late. I said, you know what, don't worry about it,
5 you will go tell them you don't have your ID and you get a
6 provisional ballot and vote.

7 Q How did you know Alex would need ID to vote?

8 A Because I read it in the Washington Post when the law
9 passed.

10 Q Had you heard any radio advertisements about the --

11 A No.

12 Q Had you received any mail from the Department of
13 Elections about it?

14 A No.

15 Q You also mentioned that you told Alex he could cast a
16 provisional ballot. How did you know he would be able to
17 cast a provisional ballot?

18 A As I stated before, I have -- I am a voter activist.
19 We learned Virginia laws to be able to convey to new
20 voters.

21 Q Those new voters that you convey those laws to, is
22 that generally the first time they are hearing about a
23 provisional ballot?

24 A Well, the provisional ballots, I have only started
25 conveying that to my voters since what occurred to my son,

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1 because I didn't realize, even though I had read about the
2 voter ID law, I didn't realize how strict they were.

3 So -- I have forgotten the question.

4 Q Ms. Tidd, going back to when you were leaving the
5 home, after you realized Alex had forgotten his ID,
6 couldn't --

7 A Couldn't find it.

8 Q Right. What happened next?

9 A We went to the polls. He -- I wanted to try to give
10 him a chance to speak for himself. He was right behind me
11 in the line. He said he would be fine. And we do, even
12 though he is disabled, we try to teach him to get through
13 life because I won't be alive forever to advocate for a
14 him.

15 So I went and I got my ballot. And went over to the
16 voting booth. And I could see him speaking to the people
17 at the thing, you know, at the table. And I thought he
18 was fine. And I voted. And it took me a few minutes
19 because there were, you know, things to read through on
20 that ballot. And I brought my ballot back to be -- to the
21 people. And I noticed he was standing over by the door.

22 Q And what happened next after you noticed him standing
23 by the door?

24 A I walked over to him and asked him if he ever had
25 voted, because I didn't see him at the ballot boxes. And

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1 he indicated to me that he had not voted. When I asked
2 him why he had not voted, he said that he was not offered
3 a provisional ballot. And I asked, you know, why didn't
4 he ask for a provisional ballot? And at that point he was
5 very anxious because that is part of who he is. He
6 doesn't, you know -- that is why he needs the advocacy is
7 to -- once anything is off he just completely shuts down.

8 Q So when you learned that Alex had not been offered a
9 provisional ballot, did you take any steps to help him
10 receive a provisional ballot?

11 A Yes. I went over to the desk where you check in and
12 said that my son here who had conveyed that he doesn't
13 have an identification card, he needs a provisional
14 ballot. And the woman at the table looked kind of
15 dumbfounded. And she said -- I said, could I get a
16 provisional ballot for him to be able to vote?

17 And she said, just a minute. And she got up from the
18 table and went and spoke to somebody over by the voting
19 booths. And then returned to me. And she indicated to me
20 that I would not be able to get the ballot for him. That
21 he would have to ask himself.

22 So I conveyed to her that my son is on the autism
23 spectrum, he is very anxious, I speak for him a lot. And
24 I am his power of attorney, you know, it is okay.

25 And she went back over to the ballot box to talk to

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1 this other gentleman. At this point my son was getting
2 very agitated and just wanted to leave. He was just
3 embarrassed. He was embarrassed in public to be, to have
4 people hear he was autistic. He felt -- he felt ashamed.

5 She came back and she said I can hand him a ballot,
6 but I can't -- I can't hand it to you to give to him.

7 I said, that is fine. That is all we need.

8 So he was given a ballot. He did actually vote on
9 the provisional ballot.

10 Q So, after Alex voted on the provisional ballot,
11 Ms. Tidd, did you have any understanding of whether or not
12 that provisional ballot would be counted?

13 A The woman who had gone back and forth a couple times,
14 she told me -- I asked what we needed to do next. And she
15 told me that he needed to appear at the registrar's office
16 in the next 48 hours to certify the vote.

17 Q Did she tell you there was an option to scan, fax, or
18 e-mail identification to registrar's office?

19 A No.

20 Q Ms. Tidd, after you left the polling location, was
21 Alex able to certify his provisional ballot?

22 A He was. Two days from then I took off from work. I
23 wasn't able to take off the next day, but I felt, you
24 know, the election was very close. I wanted to make sure
25 his vote was certified. He took off. I drove him to the

1 Fairfax County Government Center to certify his vote.

2 Q How far is the Fairfax County Government Center from
3 your home, Ms. Tidd?

4 A That is about in the same area where the DMV is.
5 About six and a half to maybe seven miles.

6 Q So, Ms. Tidd, what happened when you arrived at the
7 Fairfax Government Center?

8 A There was a long line there. It was pretty crowded
9 in the office. Because of the time of day it was I had to
10 bring both my younger children, who at the time were four
11 and seven. My four-year-old is fine. My seven-year-old
12 is an extremely low functioning autistic person. He is in
13 Extreme Behaviors Program. So, having him in an office
14 full of people like that, it was very, it was a difficult
15 situation. We waited in line for a while. We got to the
16 front of the line and Alex realized that he had left his
17 ID in the car.

18 Q At that point when Alex realized that, what happened
19 next?

20 A I said to the woman, excuse us, because it was
21 getting to the end of the day, frankly I had been there
22 for a long time with Crazy Child, my younger son, and I
23 said, you know, we are going to truck out to the car and
24 get his ID. It is end of the day. Are you guys going to
25 be -- how much longer will you guys be open? And she

1 said, oh, don't worry about it, he doesn't need an ID to
2 certify his vote.

3 Q What was your reaction when you learned that?

4 A Rage. Because I asked her, I said, if he doesn't
5 need an ID to certify his vote here, why did he need an ID
6 at the poll?

7 Q And Ms. Tidd, is it your understanding that Alex's
8 ballot was certified that day?

9 A Yes. I actually, because that election was very,
10 very close, I was very nervous. I wanted it to be
11 certified. And, you know, I asked her a couple times, are
12 you sure without the ID? Because he says he feels
13 comfortable to run down by himself to get his ID card.
14 And she said, no it is fine. He is certified.

15 Q And, Ms. Tidd, drawing on your experience assisting
16 Alex in casting his ballot, has that had any effect on you
17 perception of the Virginia election systems?

18 A Twenty-one years ago my oldest son was diagnosed with
19 autism. And for that 21 years my life has been his. And
20 it has only been compounded with my nine-year-old. And
21 that includes daily care. It includes constant advocacy
22 and includes fighting for health care. It includes
23 fighting for accommodations. Everything that he does
24 every day that he has is a struggle. And we will have
25 him, and his younger brother with him, for the rest of our

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1 lives. And we have come -- we have -- we accept that, and
2 we will be happy with that. And we have arranged our
3 lives that way. But what I realized in this is that every
4 step of process if I had not been there his vote wouldn't
5 have been counted in a very important election. And I
6 wonder when we die who will be there for him to help him.
7 Will his vote be counted? Will he be like the other 40
8 percent of autistic children who are entirely non-verbal?
9 Will he be silenced and no longer able to vote? And it
10 breaks my heart. I am angry that -- voting should not be
11 difficult for somebody whose life is already so difficult.

12 I am sorry.

13 THE COURT: Go ahead with the next question.

14 MS CALLAIS: No further questions, Your Honor.

15 THE COURT: All right.

16 Very well. Cross? Mr. Hearne?

17 CROSS EXAMINATION

18 BY MR. HEARNE:

19 Q Ms. Tidd, I am Thor Hearne for the Commonwealth
20 defendants in this case. I am just going to ask you a few
21 questions if I could.

22 For the record, would you state your race?

23 A My race?

24 Q Your race, yes. How you would answer a census form?
25 In terms of Caucasian --

1 A I am Caucasian.

2 Q Your son is as well?

3 A My son is Caucasian.

4 Q You had mentioned that you had spent time advocating
5 for him to participate in the election process and
6 informing them of the process; is that correct?

7 A Yes.

8 Q In the course of that, does that cause you to become
9 familiar with Virginia election administration law as it
10 requires somebody to cast a ballot?

11 A It does. Not extensively. I mean, we are
12 registering them to vote. We tell them that you will get
13 your information in the mail, to get to the precinct and
14 everything else, but I couldn't argue a case on Virginia
15 case law on voting.

16 Q Well, I am not saying I could either. I'm asking
17 that question.

18 It is actually a little more basic. I just wanted to
19 see if you are familiar with Virginia's absentee balloting
20 rules?

21 A I am. Vaguely. But again, I am registering voters.
22 We are registering voters. They will get information in
23 the mail with their cards.

24 Q I will ask it real specifically. You know somebody
25 in Virginia can request an absentee ballot?

1 A Absolutely, yes.

2 Q Are you aware that Virginia even has an emergency
3 absentee ballot provision for those who become disabled on
4 election day or election week?

5 A Yes, I am aware of that.

6 Q Has your son ever voted absentee?

7 A I guess that is a question that a lot of people would
8 ask about a lot of things in his life. I think that he
9 should be able to go to a poll and just vote. He has not
10 voted absentee, but he has to learn skills to get through
11 life, and one of the things once I die he will have to be
12 able to go and vote on his own. So, the absentee ballot,
13 it is, I think, better for him to go and vote and learn
14 how to do it.

15 Q And when you say that, you mean vote at the polling
16 place?

17 A Vote at the polling.

18 Q Do you know of any reason that would prevent him from
19 casting an absentee ballot?

20 A I think that we are going -- the organizational part
21 of it -- organization is not something he is good at --
22 keeping to a calendar. He has had a hard time holding
23 jobs. So to have to think about when is this, let me mail
24 this in, he is very not diligent. Very high IQ, but
25 some -- the organizational side of his brain would -- when

1 he was away at school the reason we had to take him out is
2 because he didn't remember to go to eat. He couldn't
3 figure out how to use the washer and dryer. He couldn't,
4 you know. So those basic skills that you and I would just
5 pick up easily, and I think applying for the ballot,
6 knowing when to be getting it in the mail, I think that is
7 probably beyond -- I would be worried he wouldn't get his
8 vote counted.

9 Q Would -- in 2014 with your assistance he could have
10 requested an absentee ballot; is that correct?

11 A Yes. With my assistance he could have requested an
12 absentee ballot.

13 Q And in fact in 2014 you testified, as I understood
14 it, he did in fact cast a ballot for a provisional ballot,
15 and ultimately that ballot was counted?

16 A That ballot was counted. Hopefully.

17 Q And in 2014 he possessed identification sufficient to
18 satisfy the Virginia identification law?

19 A Yes.

20 Q He possessed ID sufficient under the current law to
21 cast a ballot in future elections; is that correct?

22 A Yes.

23 Q You had testified about you consider yourself a
24 Democrat. Have you ever filled out an application to
25 become member of the Democratic party?

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1 A No, I contribute to the candidates, canvass for them
2 in every election. Some in my district, some outside, out
3 of my district in closer races.

4 Q In terms of the Virginia Democratic Party
5 specifically, have you ever paid dues as a member of that
6 party?

7 A I contribute to candidates. I don't pay dues to the
8 Virginia Democratic Party.

9 MR. HEARNE: No further questions.

10 THE COURT: Any redirect?

11 MS CALLAIS: No, Your Honor.

12 THE COURT: All right.

13 Ms. Tidd, you are excused. Thank you very much for
14 coming today. We appreciate your testimony.

15 THE WITNESS: Thank you.

16 THE COURT: Yes, ma'am.

17 (Witness stood aside)

18 THE COURT: This testimony, a lot of the testimony is
19 becoming, obviously, cumulative. I will allow only a
20 finite number. You may have two more witnesses that cover
21 this identical ground. So pick them carefully.

22 Okay, sir.

23 MR. SPIVA: Like people with disability?

24 THE COURT: No. For one reason or another were not
25 able to vote. You can, if you want to put the rest of

Tidd - cross

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1 these on and just go to the main point I will give you a
2 little bit more room. But this is becoming cumulative.
3 So unless there is something unique about the testimony, I
4 am only going to allow two more.

5 MR. SPIVA: Okay. I appreciate Your Honor's ruling,
6 and we will try to abide. I want to state for the record
7 we object, just because we -- I don't -- it is technically
8 cumulative, but there is a weight to the evidence, Your
9 Honor. I mean, I know Your Honor wanted to see people who
10 had trouble voting. I am not arguing with Your Honor's
11 ruling. And we will certainly abide.

12 THE COURT: Why not? Other people do.

13 But, I think as a good lawyer you can see that you
14 are plowing the same ground repeatedly with these
15 witnesses. To the extent that there is a different issue,
16 you may call them in abbreviated fashion, bypass some of
17 the information that is not really relevant, and just go
18 to the one point that you want to develop. I will give
19 you that tolerance. But I can't sit here for the rest of
20 the day and hear people going over the same kind of
21 problems they encountered at the polls.

22 All right. So you develop your own strategy. Okay,
23 sir?

24 MR. SPIVA: Thank you, sir.

25 THE COURT: All right.

Tidd - cross

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1 If you would like five minutes to assess --

2 MR. SPIVA: Yes. There is another issue. I mean, we
3 have a witness we weren't actually going to call until
4 after the lunch break, but he doesn't have an ID, so he is
5 actually stuck downstairs. So we were trying to figure
6 out what to do about that.

7 THE COURT: Marshal, could you have someone escort
8 the witness up? We will take care of that for you. Okay?
9 Is he the next witness?

10 MR. SPIVA: He is not next. We could use five
11 minutes, Your Honor, if --

12 THE COURT: I will give you five minutes to get the
13 other witness up here. We will move right along. Okay.
14 Five-minute recess.

15 (Recess)

16 THE COURT: All right. Next witness.

17 MR. SPIVA: Your Honor, Ms. Branch will be putting on
18 the next witness. I we will bring the witnesses and try
19 to truncate their other testimony.

20 THE COURT: I want to let you present your case, but
21 I have to impose a reasonable limitation. All right?

22 MR. SPIVA: Thank you, Your Honor.

23 THE COURT: Very well.

24 Ms. Branch, who is your next witness?

25 MS BRANCH: Your Honor, the plaintiff calls Ellen

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1 Lamb to the stand.

2 THE COURT: Okay.

3 Place your left hand on the Bible, raise your right,
4 and face the clerk of the Court.

5 ELLEN LAMB

6 WAS SWORN AND TESTIFIED AS FOLLOWS:

7 DIRECT EXAMINATION.

8 THE COURT: Have a seat on the witness stand,
9 Ms. Lamb. If you will be kind enough to give us your
10 name, spell the last name for the court reporter, please.

11 A Ellen Clarence Lamb, L-A-M-B.

12 THE COURT: All right.

13 Go right ahead.

14 BY MS BRANCH:

15 Q Good afternoon, Ms. Lamb.

16 Could you please state your address for the record?

17 A XXXX South Xxxx Street, Unit Xxxx, Arlington,
18 Virginia.

19 Q How long have you been lived in Virginia?

20 A I lived -- moved back to Virginia at the end of 2013.

21 Q Where did you leave from?

22 A I moved from Maine.

23 Q Is that where you are originally from?

24 A Originally from Virginia.

25 Q What do you do for a living?

Lamb - direct

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1 A Freelance writer and editor.

2 Q Where do you work?

3 A I work from home.

4 Q Do you have a Virginia driver's license?

5 A I do not.

6 Q Why is that?

7 A I no longer drive. I don't see well enough to pass
8 the driver's test.

9 Q Do you have any type of photo ID?

10 A I have my Maine driver's license, which is valid
11 until the end of the year, although I no longer drive.

12 Q Do you have any other type of photo ID?

13 A I do have a passport.

14 Q How did you travel here today, Ms. Lamb?

15 A My sister gave me a ride.

16 Q Are you registered to vote in Virginia?

17 A I am.

18 Q And why did you register to vote?

19 A I have always voted. I love to vote. I don't miss a
20 chance to vote if I can. I think it is not only my right,
21 but my responsibility.

22 Q Do you consider yourself to be a member of any
23 political party?

24 A As a Virginia resident I am officially not a member
25 of any party. I have previously been registered as a

1 Democrat.

2 Q And is there a party whose candidates you typically
3 vote for?

4 A I tend to vote by candidate, not by party.

5 Q I want to ask you a couple of questions about 2014
6 elections. Did you attempt to vote in the November of
7 2014?

8 A Yes, I did.

9 Q Where did you vote? Where did you go to vote?

10 A I went to the senior center in Virginia Highlands, in
11 Arlington.

12 Q How did you get there?

13 A I walked.

14 Q How long did it take you to walk there?

15 A It took ten minutes. Fifteen minutes.

16 Q Around what time would you say you arrived?

17 A Around 4:00 in the afternoon.

18 Q What happened when you got to the voting location?

19 A I stepped up to the poll workers' desk and gave them
20 my Virginia registration card, my Maine photo ID, and
21 recent utility bill to show residence.

22 I was told -- I was asked for a Virginia State photo
23 ID, and I said I did not have one. I was told I could
24 file. I could vote provisionally. But that I would not
25 be able to cast a ballot without a Virginia State photo

1 ID.

2 Q Were you aware of the photo ID law prior to going to
3 vote?

4 A I knew I had to bring some form of ID. I thought
5 that the combination of voter registration card, my name
6 ID, and a current, something that showed current address
7 would be enough to vote. It was enough to get my library
8 card.

9 Q Were you -- so, did you ultimately cast a provisional
10 ballot at the polls?

11 A I did cast a provisional ballot.

12 Q What was your understanding as to what you had to do
13 in order to make your vote count?

14 A I was told that I had to bring a valid ID to the
15 registrar's office within a certain number of days and
16 cure my ballot that way.

17 Q And how long would it have taken you to get to the
18 registrar's office from your home, do you think?

19 A It would have taken -- I don't know. Depends on the
20 time of day. Between one and two hours. The Arlington
21 registrar is not convenient to a metro station. And I
22 really only travel by metro and cab.

23 Q Did you end up curing your ballot?

24 A I did not.

25 Q Why is that?

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1 A Because the results of the election were announced
2 that night. And I didn't have time to go to the registrar
3 that afternoon. And with the results of the election
4 reported, I didn't feel that my vote would really be valid
5 if I did go to the bother of curing it.

6 Q And you said you didn't have time that afternoon to
7 cure your ballot. Why is that?

8 A I am self-employed. I work for clients who set
9 deadlines and who pay by the hour. November is a
10 particularly busy time for me. I need to work as much as
11 I can in November. Before the holidays start my clients
12 stop calling on me. If I don't work, I don't get paid.

13 Q Were you, Ms. Lamb, aware of the fact that you could
14 scan, e-mail a copy of a valid ID you might have to the
15 registrar's office to make your vote count?

16 A No, I was not aware of that.

17 Q And you mentioned earlier that you have a passport;
18 is that right?

19 A Yes.

20 Q And did you have your passport with you when you went
21 to the polls in 2014?

22 A I didn't. I don't habitually carry it around. It
23 stays in the drawer if I am not leaving the country.

24 Q Why is that?

25 A Because a passport is expensive. If I were to be

Lamb - direct

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1 robbed, or if I were to leave it somewhere, it would be a
2 real hassle and expense to replace.

3 Q So was your ballot ultimately counted in the 2014
4 elections?

5 A No, it was not.

6 Q You --

7 A I got a letter about a week or two later from the
8 registrar saying that the provisional ballot had not been
9 cured, so it wasn't counted.

10 Q Did you vote in 2015?

11 A I did.

12 Q Did you show an ID to vote?

13 A I knew this time to bring my passport.

14 Q And what information did the Maine driver's license
15 contain?

16 A It has my full name, my date of birth, the Maine
17 driver's license number, my hair color, eye color, height
18 and weight.

19 Q What about the passport? What identifying
20 information does that have?

21 A Has my name and my date of birth and place of birth.

22 Q Between the two types of ID, the Maine ID and
23 passport, which would you say contains more identifying
24 information about you?

25 A The Maine ID.

1 Q Why is that?

2 A It has my height, my weight, and my hair color and my
3 eye color.

4 Q Turning back to the 2014 election, how did the fact
5 that you weren't -- how did the fact that you weren't able
6 to vote in 2014 make you feel?

7 A I was embarrassed. I was frustrated. And then I was
8 angry when I found out that I could have e-mailed or faxed
9 that information to the registrar and I didn't have that
10 information.

11 Q Is it important for you to vote, Ms Lamb?

12 A It is very important for me to vote and very
13 important for me to vote in Virginia. I'm always aware
14 that my grandmothers were born without the right to vote.
15 I mean, this is not a new thing that women can vote. And
16 yet, in my family I know people who weren't always allowed
17 to vote. So I think it is really important.

18 Q Thank you, Ms. Lamb.

19 No further questions, Your Honor.

20 THE COURT: Cross examination.

21 CROSS EXAMINATION

22 BY MS HART:

23 Q Good morning. My name is Kirsten Hart.

24 I am one of the attorneys who represents the
25 defendants in this case. I just have a few questions for

1 you.

2 First, do you consider yourself Caucasian?

3 A Yes, I do.

4 Q You mentioned you moved here from Maine in 2013. Did
5 you drive?

6 A I did. At that time, yes.

7 Q When did you stop driving?

8 A I stopped driving in May of 2014.

9 Q You work from home; is that right?

10 A I do.

11 Q You also do some blogging?

12 A I do.

13 Q Blog regularly?

14 A Not any more. I kept a regular blog for several
15 years, but have pretty much discontinued it.

16 Q When you voted provisionally in 2014 were you given a
17 notice of provisional ballot to describe how to cure your
18 ballot?

19 A I don't believe that I was. I remember putting the
20 ballot in an envelope marked "provisional," but I don't
21 think anybody gave me a piece of paper, no.

22 Q When you were at home after voting provisionally did
23 you do any research yourself on how to cure your
24 provisional ballot?

25 A I looked up the address of the registrar and went on

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1 line to see what it would take to get me there. I went to
2 Google Maps to see, you know, by transit how I would get
3 there. And when I saw it was not close to a metro
4 station, I would have to connect to a bus, I realized I
5 wasn't going to be able to do that that day.

6 Q Did you find the registrar's office on, is it
7 Clarendon in Arlington?

8 THE COURT: Clarendon.

9 MS HART: Thank you.

10 THE WITNESS: I don't remember the address.

11 BY MS HART:

12 Q How far did you say it was from your residence?

13 A I am in South Arlington. As I recall, I seem to
14 recall going on line and looking and seeing I would have
15 to take the blue line to the orange line, and then a bus
16 from there. So it was going to take at least an hour
17 depending on the time of day.

18 Q Does three miles sound about right.

19 A Possibly.

20 I mean, and as maybe three miles in Arlington,
21 sometimes you can walk it faster than you can get there by
22 public transportation.

23 Q And you mentioned also that you did have a passport
24 at that time. Do you have any capability to scan
25 documents from your home?

Lamb - cross

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1 A I do, which is why it was incredibly frustrating to
2 learn that I could have scanned it and I didn't know that
3 I could do that. I didn't receive that information.

4 Q You also mentioned in Virginia you are not a member
5 of any particular party. But have you ever filled out an
6 application to become a member of the Democratic Party?

7 A No.

8 Q Ever paid any dues to the Virginia Democratic Party?

9 A No. I am unaware that parties charge dues.

10 Q All right.

11 A I guess -- no the answer is.

12 Q Okay. Thank you.

13 I have no further questions.

14 THE COURT: Any redirect?

15 MS BRANCH: No, Your Honor.

16 THE COURT: All right.

17 Ms. Lamb, you may be excused. Thank you for coming.

18 We appreciate your testimony this morning.

19 (Witness stood aside)

20 Next?

21 MR. KAUL: We call Pettus Hilt.

22 THE COURT: Okay.

23 MR. KAUL: I will spell her name for the record.

24 THE COURT: Ms. Hilt, if you would raise your right
25 hand, place your left on the Bible and face the clerk of

Hilt - direct

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1 the Court, please.

2 PETTUS HILT

3 WAS SWORN AND TESTIFIED AS FOLLOWS:

4 DIRECT EXAMINATION

5 THE COURT: Have a seat on the witness stand,
6 Ms. Hilt.

7 Could you please give us your full name and spell
8 both the first and last name, please?

9 THE WITNESS: Sure. Pettus Hilt.

10 Pettus spelled P-E-T-T-U-S. Hilt, H-I-L-T.

11 THE COURT: Go right ahead.

12 BY MR. KAUL:

13 Q Good afternoon, Ms. Hilt.

14 Would you please say for the record where you live?

15 A Ashland, Virginia.

16 Q How long have you lived there?

17 A Three years this June.

18 Q Ashland is just north of Richmond; is that right?

19 A Yes.

20 Q Where did you live before you moved to Virginia?

21 A In Arizona.

22 Q Do you typically vote for members of any particular
23 political party?

24 A Yes.

25 Q Can you explain?

Hilt - direct

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1 A Well, I used to vote -- I am a Republican, registered
2 Republican, but I have recently switched a little bit. I
3 vote for whoever I feel is the -- I like the views better.
4 So --

5 Q Now, is there now a party whose candidates you
6 typically support?

7 A Typically Democratic candidates. After George W.

8 Q I want to ask you about your experience voting since
9 you moved to Virginia. First, did you register to vote in
10 Virginia?

11 A Right away.

12 Q After you moved here, did you vote?

13 A Yes.

14 Q And what year would that have been when you first
15 voted?

16 A That was in 2013. And we, and I am sorry. What was
17 the question again?

18 Q I was asking the first year you voted.

19 A Yes. Yes. 2013. I am sorry.

20 Q Did you have any trouble voting that year?

21 A No.

22 Q Did you try to vote again in 2014?

23 A Yes.

24 Q What happened when you tried to vote that year?

25 A I still had my Arizona driver's license. And they

Hilt - direct

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1 told me I needed to get a Virginia-issued ID. They gave
2 me the paper work to vote. I can't remember the
3 terminology. But that my vote would count if I went
4 before Friday to the state government building and
5 completed the paper work to get an ID.

6 Q I want to go back a step to make sure the time line
7 is clear. So in 2014 you attempted to cast a ballot,
8 right?

9 A Correct. Yes.

10 Q You were asked to present an ID?

11 A I was.

12 Q What did you present?

13 A Well, the only thing I had with me was my Arizona
14 driver's license still.

15 Q Because of that you were asked to cast a different
16 type ballot?

17 A Yes.

18 Q Were you asked whether you had other types of ID?

19 A No.

20 Q So, did you cast that alternative type ballot?

21 A No. My husband and I discussed it, and it was
22 actually, sounded like kind of an embarrassing kind of a
23 pain, and we had said that if the race was tight and my
24 vote would, was needed, we would go down and do all the
25 paper work. But otherwise, I wouldn't bother.

Hilt - direct

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1 Q Just so the record is clear I want to separate out
2 two separate things. One is filling out a provisional
3 ballot. And one is going to fix it. So did you fill out
4 a provisional ballot on the spot?

5 A Yes.

6 Q Okay.

7 Then later did you attempt to fix or cure that
8 ballot?

9 A I did not.

10 Q Is that what you were explaining was because of the
11 hassle?

12 A Right.

13 Q What were you informed about? What you would have to
14 do to cure the provisional ballot?

15 A I was told that I had to go to -- I can't remember
16 the name of the government agency, but a building that I
17 needed to go to get a state-issued ID card.

18 Q Now, did you feel like you had an understanding of
19 that process based on what was described to you?

20 A Not completely. I think I am pretty intelligent. I
21 mean, it was rushed. I mean, people in line. And I, you
22 know, feel kind of silly to be an adult and not have, you
23 know, the right stuff. So I didn't completely understand
24 what I needed to do. I figured out, maybe if the time
25 came.

Hilt - direct

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1 Q Let me ask about the 2015 election. Did you attempt
2 to cast a ballot in that election?

3 A No.

4 Q Why not?

5 A I had not gotten the ID, nor -- don't tell anybody --
6 my Virginia license yet.

7 Q In preparing for your testimony for this case you
8 spoke to me, right?

9 A Um hum.

10 THE COURT: You have to answer "yes" or "no" --

11 THE WITNESS: Yes.

12 THE COURT: -- so this gentleman can take it down.

13 Go right ahead. Next question.

14 THE WITNESS: Yes.

15 BY MR. KAUL:

16 Q Did you learn in the course of that conversation that
17 your passport could be used in Virginia?

18 A When I received a call from someone that you worked
19 with, that was the first time I heard of that, that you
20 could use a passport, yes.

21 Q And do you own a passport?

22 A I do.

23 Q Okay.

24 So could you -- you have used that to vote in prior
25 elections?

1 A Apparently.

2 Q Did anybody tell you that?

3 A No.

4 Q Do you follow the news?

5 A I do.

6 Q Have you seen anything about Virginia's voter ID
7 requirement on the news?

8 A Never.

9 Q See any advertisements?

10 A Never.

11 Q How did your experience in 2014 affect your
12 confidence in Virginia's electoral system?

13 A I think it affected maybe me just as much, but it was
14 frustrating because I didn't go back and into 2015. It
15 made me feel like I am not ready to vote. So because of
16 the way things are set up now, with, you know, showing
17 that kind of ID.

18 Q No further questions. Thank you.

19 THE COURT: Cross examination?

20 MS HART: Yes.

21 CROSS EXAMINATION

22 BY MS HART:

23 Q Good morning. My name Kirsten Hart, one of the
24 attorneys for the defendants in this matter.

25 A Good morning.

1 Q I have a few questions for you.

2 A Sure.

3 Q First, do you consider yourself Caucasian?

4 A Yes.

5 Q And when you moved to Virginia you registered to vote
6 right away; is that right?

7 A Yes.

8 Q Did you make any attempt to get a Virginia driver's
9 license?

10 A No. No. I have a reason for not. Do you want to
11 hear the reason?

12 Q Yes.

13 A I -- we had prepaid my Arizona registration on my
14 car, and so I wanted the license and registration to
15 match.

16 Q Since the 2014 election have you made any attempt to
17 get a Virginia driver's license?

18 A No.

19 Q Are you aware you are required to have a Virginia
20 driver's license?

21 A I am, and I do know that. But I think that since I
22 pay taxes, I should still be able to vote.

23 Q You mentioned you have a passport. When did it
24 expire?

25 A In -- I think it is good for about ten years. About

1 four years from now.

2 Q Do you intend to use your passport to vote in the
3 up-coming elections in Virginia?

4 A I actually -- my registration expires next week, so I
5 am getting my license.

6 THE COURT: Your Virginia or motor vehicle operators?

7 THE WITNESS: Arizona registration. And my car
8 expires.

9 THE COURT: So you are going to register your car in
10 Virginia and get a Virginia operator's license?

11 THE WITNESS: Correct.

12 THE COURT: Okay. Next question.

13 BY MS HART:

14 Q Since the 2014 election have you made an attempt to
15 get a Virginia ID card?

16 A No.

17 Q Since the 2014 election have you made any attempt to
18 get a free voter ID card?

19 A I have a voter ID, or registration card.

20 Q From Virginia?

21 A Yes. I'm registered to vote, and I have a voter
22 registration card.

23 THE COURT: But you don't have a voter ID card with a
24 photo on it, right?

25 THE WITNESS: Sorry, no. I don't have a voter ID

1 card.

2 THE COURT: Okay.

3 Go ahead. Next question.

4 BY MS HART:

5 Q When you cast a provisional ballot in 2014, are you
6 given a notice of provisional ballot along with your
7 provisional ballot?

8 A I don't recall leaving with anything.

9 Q Do you recall reading anything about how to cure your
10 provisional ballot?

11 A No.

12 Q Did you do any research to figure out how to cure
13 your provisional ballot?

14 A No.

15 Q You mentioned you have been voting for Democratic
16 parties. Have you ever filled out an application to
17 become a member of a Democratic Party?

18 A No.

19 Q Have you paid any dues to be a member of the
20 Democratic party?

21 A I wasn't aware you had to.

22 Q Is that a "no?"

23 A Correct. Yes. That is a "no."

24 Q No further questions.

25 Thank you.

Polatty - direct

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1 THE COURT: Any redirect?

2 MR. KAUL: No, Your Honor.

3 THE COURT: May she be excused?

4 MR. KAUL: Yes.

5 THE COURT: You are free to go. Thank you, ma'am,
6 for coming in.

7 THE WITNESS: Thank you.

8 (Witness stood aside)

9 THE COURT: Next witness.

10 MR. SPIVA: Your Honor, plaintiffs call Laning
11 Polatty. I will spell that.

12 THE COURT: Sir, raise your right hand, place your
13 left hand on the Bible, and face the Clerk.

14 LANING POLATTY

15 WAS SWORN AND TESTIFIED AS FOLLOWS:

16 DIRECT EXAMINATION

17 Have a seat on the witness stand, sir. Yes.

18 Please give us your full name, and spell the first
19 and last name for the court reporter.

20 THE WITNESS: It is Laning, L-A-N-I-N-G. Polatty,
21 P-O-L-A-T-T-Y.

22 THE COURT: All right.

23 Go right, ahead Mr. Spiva.

24 BY MR. SPIVA:

25 Q Good afternoon, Mr. Polatty. Thank you for coming

1 today.

2 Mr. Polatty, where do you live?

3 A I live in Oakton, Virginia.

4 Q And have you lived there for a long time?

5 A Since 1999.

6 Q Okay.

7 Mr. Polatty, I understand that you have a disability.

8 Can you describe that disability briefly?

9 A I have what is called chronic fatigue syndrome, and
10 also fibromyalgia, which most experts consider two facets
11 of the same diseases in what is called ME, myalgic
12 cephalitis.

13 Q Okay.

14 As a result of that, sir, do you spend a significant
15 amount of time at your home?

16 A Yes. I have to, like not just my doctors order, but
17 because it is all I have the energy for, I have to lie
18 down with my legs elevated 23 hours a day.

19 Q How many times a year do you leave your house?

20 A Just for doctor appointments and some family events.
21 And maybe in a good year two or three movies.

22 Q How did you get down here to Richmond today?

23 A My wife had to take the day off from work to drive me
24 down, and to just to nurse me through all of the
25 difficulties of getting ready to go anywhere.

Polatty - direct

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1 Q Mr. Polatty, I understand that you have received a,
2 some type of a new photo ID in 2014. Can you tell the
3 Court about that?

4 A Sorry. My brain --

5 THE COURT: Take your time.

6 THE WITNESS: Thank you.

7 THE COURT: The question was whether you got a new ID
8 in 2014. I think he will ask you to describe it.

9 Can you do that for us?

10 THE WITNESS: I think so.

11 A photo ID for that, and my driver's license had
12 expired and I couldn't get a new one without proof of who
13 I was, like a birth certificate or something. And this is
14 a story that I know is very common for other people who
15 have chronic fatigue syndrome, and fibromyalgia who I met
16 through a support group, and on line. Our lives in terms
17 of paperwork or just staying organized enough in the house
18 to do anything are a mess. We don't have the energy to do
19 anything about it.

20 BY MR. SPIVA:

21 Q Let me interrupt.

22 A I was unable to figure out where my birth certificate
23 or my discharge papers from the Marine Corps or anything
24 else like that that could be used to prove who I was. I
25 can't find it still.

1 Q Okay.

2 Does your disability, does it have cognitive effects
3 on you?

4 A Yes. You are seeing them. Sometimes worse than
5 right now. But, yes, I used to have -- I was tested
6 several times. I used to have an IQ of 145 to 150. And
7 now for, not in all ways, but in certain ways that are
8 crucial for the basic tasks of daily living my functional
9 IQ is down to the high 80's or high 70's. I don't even
10 remember.

11 Q Okay.

12 That is all right, Mr. Polatty.

13 Let me just ask permission to lead a little bit, Your
14 Honor.

15 THE COURT: Yes, sir. I will tell you, go ahead,
16 lead and get through this.

17 BY MR. SPIVA:

18 Q Did you obtain a photo ID from DMV in 2014? Is that
19 correct?

20 A No, I had to go -- I'm sorry. I had to go to the
21 Fairfax County Government Center where they had set up a
22 place so that somebody like your wife could swear that you
23 were who you were saying you were. And I brought, you
24 know, correspondence addressed to me at that address, and
25 things like that. And they issued a photo ID for that,

Polatty - direct

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1 which was just printed out on a piece of paper. And was
2 supposed to wait to get a permanent one in the mail, but I
3 never saw that come.

4 Q That is an ID for voting purposes?

5 A I think so.

6 Q Okay.

7 Then you went and attempted to vote on election day
8 in 2015; is that correct?

9 A Yes.

10 Q What happened when you -- first of all, did you take
11 your wife? Did the wife have to take you to vote?

12 A Yes, she has to. She was --

13 THE COURT: Did you say '14 or '15?

14 MR. SPIVA: 2015. I skipped ahead a year.

15 THE WITNESS: All right. Go ahead.

16 BY MR. SPIVA:

17 Q Thank you.

18 So you went to vote in 2015?

19 A Yes. By then all I had remembered from the year
20 before was that, oh, yes, we took care of getting me the
21 photo ID so I could vote. And, you know, with my
22 cognitive problems it never occurred to me two plus two
23 equals four was done. So I never thought to, you still
24 don't have that ID with you, because it never came in the
25 mail.

Polatty - direct

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1 Q So when you went to vote in 2015 when your wife took
2 you to vote in 2015, did you have that ID that you had
3 gotten with you when you got to the polling place?

4 A No. I didn't. I don't know what became of it
5 actually.

6 Q What happened? Were you permitted to vote?

7 A The workers at that polling place had always been
8 great. I always vote in primaries and in elections. They
9 explained to me that I could go get, basically do the same
10 thing I had done before. To get a photo ID and come back.

11 THE COURT: I think the question he asked is whether
12 or not you were allowed to vote. Did they allow you to
13 vote?

14 THE WITNESS: Oh, yes, once I jumped through those
15 hoops.

16 THE COURT: Next question.

17 BY MR. SPIVA:

18 Q In order to vote did you have to go get another free
19 ID that day?

20 A Yes. Some time left to do that.

21 Q Did that require a trip by you and your wife from the
22 polling place to the registrar's office?

23 A Yes, it did.

24 Q When you got to the registrar's office what did you
25 have to do to get the new, the free voter ID?

Polatty - direct

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1 A The same thing I just described from the year before.

2 Q Okay.

3 Did you have to present any documentation to get
4 that?

5 A I think all they wanted was my wife testified I was
6 who I am.

7 Q Did you take -- and you a got the free ID at the
8 registrar's office that day?

9 A Yes. Printed out a temporary one. I haven't seen
10 the permanent one in the mail yet.

11 Q Okay.

12 Did you and your wife then go back to the polling
13 place with that ID?

14 A Yes.

15 Q Were you able to use that ID then to cast the vote?

16 A Yes.

17 Q All right.

18 How long did that process take between getting to the
19 polls, you realized you didn't have the ID, going to get
20 a, driving to get a new one, driving back to the polls and
21 casting your ballot?

22 A From standing at the desk in the polling station and
23 finding out the problem to being done and back in actually
24 using the voting machine was probably an hour and a half.

25 Q Okay.

Polatty - direct

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1 Would you have been able to do that without your
2 wife's assistance?

3 A No. No. Really.

4 Q Did she drive you each step of the way?

5 A Yes. An she talked me through what I had to do next.

6 Q And, Mr. Polatty, do you belong do a political party?

7 A I am registered as a Democrat because that seems to
8 be where I can make the most differences in the primaries.
9 But I consider myself independent.

10 Q Do you tend to vote for Democratic candidates?

11 A Usually.

12 Q Okay.

13 Thank you so much, Mr. Polatty.

14 I don't have any further questions. Opposing counsel
15 may have a few for you.

16 THE COURT: Cross examination, Mr. Hearne?

17 CROSS EXAMINATION

18 BY MR. HEARNE:

19 Q Yes, Your Honor. We will be brief.

20 Mr. Polatty, I am Thor Hearne. I represent the
21 Commonwealth defendants in this case. I have a few quick
22 questions for you.

23 First, your 2014 ballot that you cast after going
24 through the process of obtaining another photo ID, is it
25 your understanding that that ballot was counted?

Polatty - direct

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1 A Yes. I mean I cast a provisional ballot, but I
2 assumed that that was counted.

3 Q And you returned to the election board and gave them
4 the information that they asked for in terms of
5 identification to have that, we call cured, is that
6 correct?

7 A Yes.

8 Q And you voted in person in the 2014 election; is that
9 correct?

10 A Yes.

11 Q And did your vote count in that election?

12 A As far as I know, yes.

13 Q Okay.

14 The 2013 election as well?

15 A Yes. I always -- that's -- I missed -- since 1975 I
16 missed voting only two times due to sickness.

17 Q And have any of those times you missed voting been
18 since 2012?

19 A No.

20 Q Are you aware that you can vote absentee?

21 A Yes.

22 Q Have you ever voted absentee?

23 A When I was in the Marine Corps.

24 Q And are you aware that you can vote absentee now as
25 an individual with a disability?

1 A Yes, I am.

2 Q Are you aware that if you vote absentee you don't
3 need to provide a photo ID?

4 A Sorry. My brain is going blank. What was what
5 question again?

6 Q The question was, if you vote absentee are you aware
7 you do not need to provide a photo ID?

8 A Yes, I am.

9 Q And -- I may have failed to ask this question at
10 first -- for the record, would you state your race? Do
11 you consider yourself Caucasian?

12 A Yes. Caucasian.

13 Q And the ID that you have now obtained in after the
14 2015 experience, do you still have that?

15 A I have the temporary one that was printed out on the
16 computer printer. But I have not seen the permanent one
17 come in the mail.

18 Q Assuming that comes in the mail, do you now
19 understand that you have ID sufficient to vote in future
20 elections?

21 A Yes.

22 Q Thank you.

23 No further questions.

24 THE COURT: Any redirect, Mr. Spiva?

25 MR. SPIVA: No, Your Honor. Thank you.

Smith - direct

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1 THE COURT: All right.

2 You may step down, sir. Thank you very much for
3 coming. We appreciate you coming down and testifying
4 today.

5 THE WITNESS: I consider it an honor, sir.

6 THE COURT: Thank you, sir.

7 (Witness stood aside)

8 Next witness.

9 MR. KAUL: Bobbie Smith, Your Honor.

10 THE COURT: Would you be kind enough, sir, to raise
11 your right hand, place your left hand on the Bible, and
12 face the Clerk?

13 BOBBIE SMITH

14 WAS SWORN AND TESTIFIED AS FOLLOWS:

15 THE COURT: Have a seat on the witness stand, sir.

16 Mr. Smith, please provide us your full name, sir, and
17 spell the last name for the court reporter so he can get
18 it right.

19 THE WITNESS: Bobbie Smith, Jr. Bobbie with an "I"
20 as opposed to a "Y."

21 THE COURT: Thank you, sir.

22 Go ahead.

23 DIRECT EXAMINATION

24 BY MR. KAUL:

25 Q Mr. Smith, you please tell the Court where you live.

Smith - direct

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1 A I live in Fredericksburg, Virginia.

2 Q For the record, what is your race?

3 A Black.

4 Q Do you consider yourself a member of a political
5 party?

6 A Yes. I considered myself to be a Democrat.

7 Q Where did you grow up?

8 A I grew up in Fredericksburg, Virginia, but originally
9 I came to Fredericksburg from Washington, D.C. at the age
10 of ten.

11 Q How old were you when you moved Fredericksburg?

12 A I was ten.

13 Q Sorry.

14 Your Honor, I was going to ask, is it all right if I
15 lead the witness through this portion?

16 THE COURT: Yes.

17 BY MR. KAUL:

18 Q Did you attend segregated schools when you went to
19 school in Fredericksburg?

20 A Yes, I did.

21 Q And did you ultimately attend integrated schools?

22 A Yes, I did my freshman year in high school.

23 Q After you attended integrated schools were there
24 still segregated events at the school?

25 A Yes, there were. As a matter of fact there used to

Smith - direct

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1 be an annual dance sponsored toward by one of the clubs at
2 my high school. And it was segregated. And it was held
3 in a segregated venue as well.

4 Q Did the fair grounds where you live have whites only
5 rest rooms?

6 A Yes. They had, actually "white" and "colored" signs
7 over top of the restrooms.

8 Q When you went to the movies did you have to sit in
9 the balcony because of your race?

10 A Yes, we did.

11 Q Have you been called racial epithets?

12 A Yes. Several times --

13 Q In --

14 A -- in my life time.

15 Q You grew up in near poverty, is that right?

16 A Yes, I did. My home life wasn't really that
17 exemplary. My father was somewhat not around much. And
18 financial situation was affected by his not being around.

19 Q Was the town you grew up in segregated?

20 A Yes. Up until about 1968, yes.

21 I would say I moved to Fredericksburg in 1963. And I
22 attend segregated schools. One of the things when I was
23 in Washington the schools were integrated, but I found it
24 to be kind of a different situation when I moved to
25 Fredericksburg.

Smith - direct

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1 Q Did you make any observation about the counseling
2 that you received at your high school?

3 A Yes, I did. I found that the majority of the black
4 students would be steered directly maybe towards
5 vocational types jobs not necessarily towards the
6 academics. I know myself I was steered towards the
7 general course of studies more so than maybe the academic
8 courses of study. As a result, I made decisions based on
9 that steering in terms of that that affected my life
10 afterwards.

11 Q When you and your other African-American friends
12 gathered, did you receive attention from authorities?

13 A Oh, absolutely, man. It was -- it seemed to be when
14 we just hanging out together that whenever the police
15 would be around they would slow down and look at us and
16 think maybe perhaps we were ready to commit some type of
17 crime or something that was against the norm and things
18 like that.

19 Q Did there come a time you became involved with the
20 Virginia Democratic Party?

21 A Yes, there was.

22 When I was in college I joined the Fredericksburg
23 Democratic Committee. I was elected sergeant at arms of
24 the committee. I was also chosen as a delegate to the
25 1978 Virginia State Democratic convention held in

1 Williamsburg at the time.

2 Q Let me ask you about your experience voting in 2014.

3 A Okay.

4 Q Prior to going to vote in 2014 did you know about the
5 photo ID law that was in place?

6 A Yes, I did.

7 Q All right.

8 So, what happened when you went to vote in 2014?

9 A Well, when I went to vote -- well here it was. I
10 knew the people who worked at the polls. When I went to
11 vote I said to myself, knowing that the law was saying
12 voter identification, I hinged my voting upon the word
13 "identification." I knew the people who worked at the
14 polls, have known them for years, been my neighbors. So I
15 felt that they could very well identify me. It wasn't any
16 problem of me being identified as Bobbie Lee Smith, Jr.
17 seeing that these people have known me over the years.
18 And I felt that I didn't need the state to issue me any
19 type of identification to validate my existence.

20 I mean the people knew me, they know me as Bobbie Lee
21 Smith, Jr. So there would be, I thought there would be no
22 problem in identifying me as the person who had the
23 identification that I had at the time to use.

24 Q So when you went to the polls in 2014, were you
25 expecting to be able to cast a regular ballot?

Smith - direct

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1 A I was hoping to, yes, sir. I was, yes. Yes, I did.

2 Q And did you have an expired ID at that point in time?

3 A I had an expired Virginia driver's license at the
4 time.

5 Q All right.

6 Do you know when that expired?

7 A Yes. It expired February 1st, 2013.

8 Q When you went to vote in 2014 did you bring that to
9 the polls with you?

10 A I had my expired driver's license. I had a voter
11 registration card. I had my social security card with me
12 at the time.

13 Q Okay. So when you presented to vote were you asked
14 for identification?

15 A Yes, I was.

16 Q Did you provide all of those, or did you show all
17 those forms?

18 A Yes, I did.

19 Q So the record is clear -- let me finish let question
20 before you answer.

21 A Sorry.

22 Q That is okay.

23 So what happened after you showed those forms of ID?

24 A I was told that I needed to step aside from the
25 registration table. And I was led a few feet away to the

Smith - direct

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1 area where there was a box there and I was told to fill
2 out a form and put the form in the box. And that the
3 Friday of that week that if I would go down to the
4 registrar's office and present the identification that
5 they required, that my vote would be counted.

6 Q Okay.

7 Do you know what type ballot it was you filled out
8 when you were brought to the side?

9 A It was a provisional ballot.

10 Q Did you put that in some sort envelope?

11 A Yes, I did. And then they stuck it in a box after
12 that.

13 Q Do you remember anything about the color of the
14 envelope?

15 A I believe it was green, as I remember. For some
16 reason, green sticks in my memory.

17 Q After you cast that provisional ballot did you
18 attempt to go to the registrar's office to cure it?

19 A No, I didn't, because the person that I wanted to win
20 the election had been declared the winner, so I figured,
21 well, since the declaration had been made that I just
22 wouldn't follow through with the rest of it.

23 Q Okay.

24 Now, let me ask you. Did you bring some paper work
25 with you today?

1 A Yes, sir, I did.

2 Q I don't need you to pull it out. But let me ask,
3 what does the paper work show?

4 A I have two pieces of paper work, my voter's
5 registration card with me, and the original DMV form
6 telling me that I needed to renew my driver's license.

7 Q Does that form show when your driver's license
8 expires?

9 A Certainly does.

10 Q Does that indicate it expired in February 2013?

11 A It certainly does.

12 Q Does that also show when you renewed your license?

13 A I just recently renewed it in June of this year. So
14 I didn't have that. Doesn't have that on there.

15 Q Have you ever seen a printout of your voter history
16 from Virginia?

17 A No, I haven't.

18 Q All right.

19 If that voter history indicated that you did not cast
20 a provisional ballot in 2014, that you had voted a regular
21 ballot, would that be incorrect?

22 A It would be incorrect; yes, it would.

23 Q When you cast a provisional ballot did anybody say
24 anything about a free ID?

25 A No, they did not.

Smith - cross

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1 Q Did you have, ever see any advertisements or
2 commercials regarding the voter ID law before you voted in
3 2014?

4 A I saw them in terms of as related on the national
5 level, but as far as Virginia or state or local, I saw
6 nothing to no that effect.

7 Q No further questions.

8 THE COURT: Cross examination?

9 CROSS EXAMINATION

10 BY MS SCHNEIDER:

11 Q Mr. Smith, my name is Sara Schneider, I'm an attorney
12 for the defendants. I have a few questions for you.

13 A Sure.

14 Q Do you ever drive a car?

15 A Do I ever drive a car?

16 Q Yes.

17 A Yes, I do.

18 Q You own a car?

19 A No, I do not.

20 Q Did you ever drive a car after February 1st of 2013?

21 A No, I did not. Because it would be against the law.

22 Q Are you planning to renew your driver's license?

23 A I have renewed it.

24 Q So at this time you have an ID that you can use to
25 vote, correct?

1 A I hope so.

2 Q When did you renew your driver's license?

3 A When did I render it?

4 Q Renew?

5 A Renew it. June 10 of 2015.

6 Q Did you attempt to vote in 2015 general election?

7 A No, I did not.

8 Q And you live at XXX XXXXXXXX Street?

9 A That's correct.

10 Q And that is in Fredericksburg, Virginia?

11 A Yes, it is.

12 Q Do you know where the Office of Elections is on

13 Caroline Street?

14 A Yes. 601 Caroline Street.

15 Q Is that just a half mile from your residence?

16 A I don't know the exact distance, but I would think

17 maybe half a mile would be close to being accurate.

18 Q Did you do any research when you, after you cast the

19 provisional ballot?

20 A Research?

21 Q In terms of you how you could cure your provisional

22 ballot, insure your vote was counted?

23 A No, I did not.

24 Q Do you have a cell phone?

25 A Yes, I do.

Smith - redirect

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1 Q Does it have access to the internet?

2 A If I pay for it, yes.

3 Q You didn't -- did you ask any further questions when
4 you were at the polls as to how you could cure your
5 provisional ballot?

6 A I wasn't concerned about that at all. No, I did not.

7 Q Does your cell phone have a camera?

8 A Yes, it does.

9 Q So you didn't attempt to go to the Department of
10 Elections about half a mile from your residence to obtain
11 an identification, did you, in 2013?

12 A No.

13 THE COURT: He testified to that.

14 He very clearly said he did not have after he learned
15 the winner he didn't see why he needed to vote.

16 MS SCHNEIDER: No further questions.

17 THE COURT: Any redirect?

18 REDIRECT EXAMINATION

19 BY MR. KAUL:

20 Q Just very briefly, Your Honor.

21 You were asked about why you didn't need a license.
22 Why didn't you?

23 A I didn't renew my license because I worked for the
24 City of Fredericksburg and the City employees are able to
25 ride public transportation without any cost. Since

Smith - recross

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1 Fredericksburg is a relatively small town, and I didn't
2 necessarily need to go any great distances, I felt that
3 having the identification, work for the City of
4 Fredericksburg, would suffice enough for me to be able to
5 travel within the city.

6 Q Did the cost of obtaining a driver's license present
7 any concern for you?

8 A Not really.

9 MR. KAUL: Thank you.

10 THE COURT: You are welcome. All right. May
11 Mr. Smith be excused at this point?

12 MS SCHNEIDER: I have one question on redirect.

13 THE COURT: All right.

14 It is not redirect, it is recross.

15 MS SCHNEIDER: Sorry.

16 THE COURT: Go ahead. You can ask one, and then we
17 will move on.

18 RECROSS EXAMINATION

19 BY MS SCHNEIDER:

20 Q Do you have a photo ID from the City of
21 Fredericksburg, employment Id?

22 A There is no photo, but I have ID.

23 MS SCHNEIDER: Thank you.

24 THE COURT: You are free to go. Thank you, sir, for
25 coming today. We appreciate your testimony.

Smith - recross

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1 THE WITNESS: Thank you for the opportunity.

2 (Witness stood aside)

3 THE COURT: Yes, sir.

4 All right. The testimony of that last gentleman is
5 almost identical to testimony we have heard before. I
6 have given you latitude. Now I want you to honor it,
7 okay? Only to the extent that it is different from the
8 other individuals' situation.

9 MR. SPIVA: Yes. Understood, Your Honor. We are
10 trying to limit it.

11 You know, and, you know we have a lot of these people
12 they came in today, some from farther away so, you know,
13 we hate to send them home completely without --

14 THE COURT: I understand that. I appreciate it. But
15 I want you to hew carefully to what I told you to do. I
16 want to talk about unique problems that distinguishes them
17 from your other witnesses. Okay?

18 MR. SPIVA: Okay.

19 THE COURT: You can get some context, a little bit.

20 MR. SPIVA: Okay.

21 THE COURT: But unless it -- if it is not different
22 from the other witnesses, it is cumulative, and I am not
23 going to allow it. Okay?

24 MR. SPIVA: Then, Your Honor, I think after lunch,
25 also, we should be, after this next witness, presumably,

Etheredge - direct

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1 based on Your Honor's schedule, the witnesses that we
2 intend to call in the afternoon are pretty much completely
3 different. One is an expert, and the other is a delegate.

4 THE COURT: That is fine. That is fine. That is
5 perfectly all right. But I won't repeat myself.

6 Who is your next witness?

7 MS BRANCH: Mr. Etheredge, Your Honor.

8 THE COURT: Okay.

9 Mr. Etheredge, come on up.

10 If you would be kind enough to raise your right, left
11 hand on the Bible, and face the Clerk of the Court.

12 JACK ETHEREDGE

13 WAS SWORN AND TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 THE COURT: Have a seat on the witness stand, sir.

16 All right. Please give us your full name, sir, and
17 spell the last name for the court reporter.

18 THE WITNESS: It is Jack Etheredge. It is
19 E-T-H-E-R-E-D-G-E.

20 DIRECT EXAMINATION

21 BY MS CALLAIS:

22 Q Mr. Etheredge, where do you live?

23 A I live in Ashburn, Virginia.

24 Q Can you give the address for the Court?

25 A It is XXXXX Helix, H-E-L-I-X, Drive.

Etheredge - direct

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1 Q How long have you lived in Ashburn?

2 A Since 2012.

3 Q Why did you move to Ashburn?

4 A I moved there to work with the Heritage Medical
5 Institute to get a Ph.D.

6 Q So are you student, Mr. Etheredge?

7 A Yes.

8 Q What University are you a student at?

9 A It is a collaboration with the University of
10 Cambridge in England.

11 Q Mr. Etheredge, how old are you?

12 A Twenty-six.

13 Q Mr. Etheredge, you mentioned you were a student. Do
14 you have a student ID?

15 A Yes, I do. From Cambridge.

16 Q So, does that ID, is that a photo ID?

17 A Yes, it is. It has my name on it, as well, yes.

18 Q What other information does it have on it?

19 A It has the name of the university, my name, my photo,
20 my student ID number, and if I am not mistaken also the
21 college within the university that I am associated with.

22 Q The university name on that is University of
23 Cambridge?

24 A Yes.

25 Q Mr. Etheredge, do you also work.

Etheredge - direct

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1 A Yes, I do, at the Howard Hughes Medical Institute.

2 Q Do you have an employee ID?

3 A I do.

4 Q What is on that ID?

5 A That is just my photo and my internal work ID number.

6 Q Okay.

7 Mr. Etheredge, are you registered to vote in

8 Virginia?

9 A Yes, I am.

10 Q How long have you been registered to vote?

11 A Since I moved to Virginia in 2012.

12 Q So you, do you consider yourself a member of any
13 political party?

14 A Yes. I am a Democrat.

15 Q Now, Mr. Etheredge, I want to talk a little bit about
16 2014. Did you attempt to vote in the 2014 election?

17 A Yes, I did.

18 Q Where did you attempt to vote in 2014?

19 A The same place where I had voted before, which is
20 just at some school.

21 THE COURT: What school, sir?

22 THE WITNESS: I don't remember the name.

23 THE COURT: What school?

24 THE WITNESS: Just at a school.

25 THE COURT: Go ahead.

1 BY MS CALLAIS:

2 Q What time did arrive at the polling location?

3 A I arrived pretty late, about an hour before they
4 closed.

5 Q Why is that?

6 A I went there with two friends. One of my workmates
7 drove us, drove us there. And we had to wait for everyone
8 to be done with experiments and meetings and everything
9 for the day before we could go.

10 Q Why did you go with one of your friends,
11 Mr. Etheredge?

12 A Only one of the three of us has a car. So, the one
13 with the car offered to give us a ride and drove us over
14 there.

15 Q Do you drive, or do you have a car, Mr. Etheredge?

16 A No, I don't have a car.

17 Q And do you typically -- how do you get around
18 transportation?

19 A There is a shuttle that comes to work, and there is
20 also public transportation. But normally if I need to get
21 off campus I ride with friends.

22 Q So, Mr. Etheredge, can you tell the Court, explain to
23 the Court what happened when you arrived at the polling
24 location?

25 A Normal stuff. In the beginning they just ask for,

Etheredge - direct

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1 you know, my name, which they have on file already, and my
2 address, which they had on file. And then when I went to
3 show them my ID they told me that the law had recently
4 been changed. So, I wasn't able to use my Georgia
5 driver's license. And one of the three friends that I
6 went with wasn't able to use his Texas driver's license.
7 So we went through the various other forms of photo ID
8 that the two of us had, and neither of us had anything
9 that now qualified as something that they would use.

10 Q Mr. Etheredge, let me go back so I can make sure it
11 is clear. But what was the first form of photo ID you
12 presented?

13 A My Georgia driver's license.

14 Q And do you typically use the Georgia driver's license
15 as a form of photo identification in Virginia?

16 A Yes, for everything. When I go to the doctors to
17 verify my insurance, when I came here, for instance, to
18 get into this courtroom. Yes, that is the only time I
19 have ever had a problem using it as my form of official
20 photo ID.

21 Q Mr. Etheredge, when you arrived at the polls that
22 day, was that the first time you had learned that that
23 form of ID would not be sufficient for voting?

24 A It was not only the first time I had learned, but it
25 was the first time any of the three of us who arrived

1 learned.

2 Q And, Mr. Etheredge, you mentioned that you pulled out
3 other forms of photo ID. What other forms was it?

4 A I had my Cambridge ID, and my work ID, and I also
5 have a credit card that has both my name and my photo on
6 it.

7 Q Were any of those forms acceptable?

8 A No.

9 Q Mr. Etheredge, after going through those IDs did
10 you -- what happened next?

11 A I was given a special green ballot to fill out, and
12 then I was told that if I wanted to have it counted that I
13 had a couple of days to arrive in person at the court
14 house with an acceptable form of ID, which either would
15 have required going to the DMV and paying to get a new
16 form of identification or to bring my passport, which I am
17 fortunate enough to have only because I did go to
18 Cambridge.

19 Q Now, Mr. Etheredge, were you informed that you could
20 scan, fax, or e-mail a copy of your passport to the
21 registrar's office?

22 A No, I wasn't aware of that. As far as I understood,
23 I had to turn it in in person.

24 Q You mentioned that you have a passport.

25 Mr. Etheredge, did you have your passport on you that day?

Etheredge - direct

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1 A No. I pretty much never carry my passport inside the
2 U.S. I mean, the only reason I ever need it is to fly out
3 of the country. So I don't carry my passport. Like I
4 wouldn't carry around my social security card or birth
5 certificate because I don't need to lose important
6 documents like that.

7 Q So, Mr. Etheredge, after you left the polling
8 location that day were you able to cure your ballot?

9 A No, I wasn't. So, because I had, was under the
10 impression that I had to arrive in person. That would
11 have involved going during, you know, work hours in the
12 next couple days, 9:00 to 5:00. And that simply wasn't
13 something that I was able to do.

14 Q Mr. Etheredge, do you know if your ballot was counted
15 in the election?

16 A I am pretty sure it was not.

17 Q Mr. Etheredge, after going through your experience in
18 2014 did that have any impact on your perception of
19 Virginia's election system?

20 A Yes. I mean, I am supposed to be able to vote in
21 Virginia. I had voted in the past. I had voted after
22 that just fine. So, I mean, the fact that my vote that
23 was clearly supposed to count didn't count makes me think,
24 you know, a lot more poorly of the Virginia voting system.
25 And I know that it wasn't just my vote that didn't count,

Etheredge - cross

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1 but plenty of people's votes didn't count.

2 MR. HEARNE: Objection, Your Honor.

3 THE COURT: Objection sustained.

4 MS CALLAIS: No further questions Your Honor.

5 THE COURT: All right.

6 CROSS EXAMINATION

7 BY MS SCHNEIDER:

8 Q Mr. Etheredge, my name is Sara Schneider, and I am an
9 attorney representing the defendants. I have a few
10 questions for you.

11 Do you consider yourself Caucasian?

12 A Yes.

13 Q You voted in the 2015 general election, correct?

14 A Sorry. Yes, 2015.

15 Q 2015?

16 A Yes.

17 Q Did you show ID?

18 A Yes.

19 Q What ID did you show?

20 A I made a special point to be able to bring my
21 passport.

22 Q When you cast a ballot in the 2014 election did you
23 receive a notice?

24 A A notice?

25 Q Notice of original ballot notice? Do you know?

1 A I don't think so. Is that something that would have
2 been mailed to me?

3 Q Were you handed a provisional ballot?

4 A I was given a green ballot that I assumed to be a
5 provisional ballot.

6 Q Did you conduct any research about how you could cure
7 your provisional ballot?

8 A I was told that I had to go to the court house. So I
9 looked up when the court house was open and where it was.
10 And tried to figure out how I would get there.

11 Q Did do you any research about any alternative?

12 A Alternative?

13 Q To going to the courthouse, as you say.

14 A I don't know what alternatives you are --

15 Q Did you do research on any other ways you could have
16 your provisional ballot counted?

17 A No, I don't think so.

18 Q Did you go to the Department of Elections web site?

19 A I doubt that I did.

20 Q Have you ever applied to be a member of the
21 Democratic Party of Virginia?

22 A No. I understand that that is not necessary in
23 Virginia.

24 Q Have you ever paid any dues to the Democratic Party
25 of Virginia?

1 A No.

2 Q No further questions, Your Honor.

3 THE COURT: Any redirect?

4 MS CALLAIS: No, Your Honor.

5 THE COURT: You are free to go. Thank you very much
6 for your testimony. We appreciate you coming in, sir.

7 THE WITNESS: Thank you.

8 (Witness stood aside)

9 This will be the final witness before the lunch
10 recess?

11 MR. SPIVA: Your Honor, I don't know if we have
12 another witness before lunch, but I wanted to raise an
13 issue, which is, we had two trial depositions that we
14 originally had been planning to present by video. But I
15 think in lot of Your Honor's orders -- what I was going to
16 suggest is that we just submit both the designations for
17 those two witnesses and the videos into evidence. And
18 then Your Honor can review at your leisure, you know,
19 whichever media you wanted to --

20 THE COURT: That would be fine. Even more preferred
21 would be for you two gentlemen to work out a summary.

22 MR. SPIVA: The designations are pretty brief, Your
23 Honor. Pretty much depositions. They were like maybe 30
24 or 40 minutes tops. We only designated a sub-portion of
25 it.

Etheredge - cross

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1 MR. FINBERG: If Your Honor wants a summary --

2 THE COURT: Yes. I have so many trials coming up,
3 folks, I know you want an opinion in a reasonable amount
4 of time. I would like to accommodate that, but if I have
5 to spend every Saturday and Sunday looking over items I
6 won't have a lot of time to write opinions on weekends,
7 which I do. All right. See what you can do.

8 MR. SPIVA: Okay.

9 THE COURT: I appreciate that. Thank you.

10 MR. SPIVA: Thank you.

11 THE COURT: Do you have any other individuals? If
12 not, we will recess for lunch now.

13 MR. SPIVA: Next witness is scheduled for after
14 lunch.

15 THE COURT: Very well. We will recess one hour for
16 lunch.

17 (Recess)

18 (Krista Harding is now the court reporter.)

19 THE COURT: Who'll be your next witness?

20 MR. SPIVA: Your Honor, our next witness will be
21 Dr. J. Douglas Smith. Ms. Branch is going to call him.

22 I just wanted to make one note, Your Honor, that we
23 have another witness who's a delegate who has like a brief
24 window at like 3:00. And it may be possible that the
25 direct of Dr. Douglas -- rather, Dr. Smith might not be

1 done, and we were wondering if --

2 THE COURT: I'll be more than glad to accommodate
3 you. Who is your witness?

4 MR. SPIVA: Dr. Smith, Your Honor.

5 THE COURT: No. Who is the delegate?

6 MR. SPIVA: Delegate Lopez.

7 THE COURT: Okay. Sure. I'll be more than glad to
8 accommodate you.

9 MR. SPIVA: Thank you, Your Honor.

10 THE COURT: Sure. All right.

11 Doctor, come on forward, please.

12 Doctor, if you would be kind enough to raise your
13 right hand, sir, your left hand on the Bible, and face the
14 Clerk of the Court.

15 THE CLERK: You do solemnly swear that the testimony
16 which you are about to give, in this case, before this
17 Court, shall be the truth, the whole truth, and nothing
18 but the truth, so help you God?

19 DR. SMITH: I do.

20 THE COURT: Have a seat on the witness stand, sir.

21 All right, Ms. Branch, you may inquire.

22 Before we begin, is there any challenge to
23 Dr. Smith's credentials?

24 MR. FINBERG: Your Honor, there are no challenges to
25 his credentials as far as his being an expert on Virginia

1 history. I do have an objection to the extent that
2 Dr. Smith may be offering opinions about the existence or
3 non-existence of voter fraud.

4 THE COURT: You can make those objections as the
5 questions are asked.

6 MR. FINBERG: Yes, sir.

7 THE COURT: I just want to know whether or not you're
8 disputing his credentials as an expert?

9 MR. FINBERG: No, not in terms of his expertise on
10 Virginia history.

11 THE COURT: Then he'll be received as an expert, and
12 permitted to give expert testimony, in the area of
13 Virginia history, I guess with an emphasis on election
14 law?

15 MS. BRANCH: Yes, with an emphasis on racial
16 discrimination.

17 THE COURT: All right. That's fine. He'll be
18 received for that purpose.

19 Go right ahead.

20 MS. BRANCH: Thank you, Your Honor.

21 Whereupon, **Dr. John Douglas Smith**, having been
22 duly sworn in, testifies as follows:

23 **DIRECT EXAMINATION**

24 BY MS. BRANCH:

25 Q Dr. Smith, could you just describe your professional

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1 background briefly for the Court. You've already been
2 admitted as an expert, but if you can just familiarize the
3 Court with your background.

4 A Sure. I received my bachelor's from the University
5 of North Carolina, Chapel Hill. My masters and Ph.D. in
6 American History from the University of Virginia.

7 Since completing my Ph.D. in 1998, I've lived
8 exclusively in Southern California. I've taught at Cal
9 Tech, at Occidental College, and currently at The Colburn
10 Music Conservatory where I'm the Director of Humanities.

11 THE COURT: All right.

12 BY MS. BRANCH:

13 Q And can you describe some of your academic work
14 that's relevant to this case?

15 A Sure. Most specifically I'm the author of a book
16 entitled *Managing White Supremacy: Race, Politics and*
17 *Citizenship in Jim Crow, Virginia*, which began as my
18 dissertation at the University of Virginia, and
19 subsequently published by the University of North Carolina
20 Press.

21 I'm more recently the author of *On Democracy's*
22 *Doorstep: The Inside Story of How the Supreme Court*
23 *Brought "One Person, One Vote" to the United States*, which
24 bears less directly on the case, although there is a
25 portion of the -- a reapportionment of rulings, which did

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1 come from Virginia.

2 THE COURT: And, Dr. Smith, it's important, as you
3 know, this young lady has got to take your testimony down,
4 so keep your pace slow, okay?

5 DR. SMITH: Thank you.

6 THE COURT: All right. And I'll remind you from time
7 to time.

8 DR. SMITH: Okay.

9 THE COURT: All right. Go ahead.

10 MS. BRANCH: Thank you, Your Honor.

11 BY MS. BRANCH:

12 Q Dr. Smith, have you submitted expert reports on this
13 case?

14 A Yes.

15 Q And what methodology did you use in preparing those
16 reports?

17 A Well, I -- much of the work that I did in this case
18 was based directly on the work that I had done in writing
19 the book *Managing White Supremacy*. And the methodology
20 for that was an exhaustive analysis of newspaper articles,
21 government documents, the papers of Virginia governors, and
22 other elected officials, during the time under
23 consideration, legislative acts, the Assembly, newspaper
24 reports of those debates.

25 Virginia, for much of that time period had no --

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1 there's no documented debates of Virginia committee
2 legislative hearings, either floor debates or committee
3 hearings, up until very recent times. And certainly most
4 of the time I was looking at -- a great reliance on
5 newspaper articles to get at those debates. Looked at,
6 you know, Acts of the Constitutional Convention of 1901
7 and 1902. And various other, you know, manuscripts that
8 are fairly typical of political historians.

9 Q And you've mentioned your book entitled *Managing*
10 *White Supremacy*. What year was that published?

11 A It was published in 2002.

12 Q Now, Dr. Smith, at a high level, what opinion did you
13 reach regarding Virginia's history as set forth in your
14 expert reports?

15 A Well, most specifically, to get to the point, I offer
16 the opinion that the voter identification law under issue
17 in this case, Senate Bill 1256, is consistent with the
18 long line of efforts throughout Virginia's recent history
19 to make it more difficult for, and to suppress, the vote
20 of African-Americans and other minorities.

21 Q And what period of history did you examine in your
22 report?

23 A Well, roughly the period from the end of the Civil
24 War to the present, but with an emphasis on the 20th
25 century.

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1 Q Why did you choose include that time period in your
2 report?

3 A Well, I think, you know, we could extend it back
4 further. But, A, it's certainly not my area of expertise,
5 you know, prior to the Civil War. And secondly, I think
6 that looking at the post-slavery era, we're looking at the
7 first time that African-Americans were enfranchised, and
8 moving forward from there is the appropriate demarcation
9 point.

10 Q Now, the focus of my examination today, Dr. Smith,
11 will be on history after the Voting Rights Act was passed
12 in 1965, but I do want to ask you about a couple of
13 broader themes from the earlier history that you presented
14 in your report. So I'd like to turn your attention to the
15 period right after slavery and the Civil War known as
16 reconstruction. Can you just provide a brief overview of
17 the participation of blacks in politics during the
18 reconstruction era?

19 A Sure. Very briefly. So, Virginia was actually the
20 only former state of the Confederacy to avoid military
21 rule in the reconstruction, and it did so because it
22 passed a new constitution in 1869 which, most importantly,
23 enfranchised all men. So all black males were allowed to
24 vote from 1869 forward. And they exercised that right
25 immediately in tremendous numbers.

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1 The first legislature that was elected under that new
2 constitution included 27 black members out of then a 180
3 member legislature. So it's a little larger than the
4 legislature today. But there were 27 members, black
5 members, elected.

6 For African-Americans, it was obviously a remarkable
7 step forward. Something that was quite significant. For
8 many whites, there were concerns that this was -- you
9 know, this is when you started hearing the phrase that we
10 have to stop this because of negro domination, et cetera,
11 et cetera. And so right from the very beginning, there
12 were obstacles put up, and the voting process became much
13 more contested after the introduction of African-American
14 males into the voting process.

15 Q If I can just ask you to slow down.

16 A I'm sorry.

17 COURT REPORTER: Slow way down.

18 Q Can you describe the political climate in terms of
19 partisanship during the reconstruction era?

20 A Well, sure. I think with the introduction of
21 African-Americans into the political process, the
22 political process became much more contested. This is the
23 one era in post-Civil War history where there was actually
24 a lot of voter fraud and vote buying and election rigging.
25 A lot of violent -- election related violence at the polls

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1 in sort of the 1870s and 1880s as African-Americans became
2 even more a significant presence in the states' political
3 life.

4 This became especially true in the late 1870s,
5 early -- late 1870s and early 1880s with the diversions of
6 the readjuster movement. And the readjusters were
7 initially -- and I don't want to get sidetracked too much.
8 But there's basically a big dispute in Virginia over
9 funding the state's pre-Civil War debt. So this, on its
10 surface, has nothing to do with race.

11 But the dispute over bankers and other corporate
12 interests wanting to fund that debt. There were others,
13 such as the readjusters, who thought the money would be
14 much better spent on the public school system, and that
15 paying the states' debts first was sort of -- not the best
16 way to spend state funds.

17 So the readjusters is actually a very quite
18 significant political revolt, if you will. They actually
19 took control of the state after the 1879 elections.
20 Initially, the readjusters were not really so focused on
21 the issue of black voting, and whatnot. But as
22 African-Americans came to support the readjusters,
23 primarily over the issue of public schools, the
24 readjusters realized that their ongoing political success
25 actually depended upon black voters. And so there was a

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1 great deal of outreach and -- on the behalf of the
2 readjusters.

3 The Conservative Party, which then becomes the
4 Democratic Party a few years later, made race an issue
5 significantly and substantially from the 1870s on. And so
6 by the mid-1880s, the whole issue of black role in
7 politics becomes more and more contested to the point of
8 where once the readjusters are thrown out of office in
9 1883, that the Conservative Party reconvenes itself the
10 Democratic Parry, makes the elimination of black voters
11 from a political system a priority.

12 COURT REPORTER: Please slow down.

13 Q And you mentioned earlier that there were a number of
14 black legislators in the Virginia General Assembly. Were
15 any of Virginia's representatives in Congress black?

16 A There were. And I would say there's two things about
17 that. So actually, there was so much electoral fraud and
18 shenanigans. There were actually 20 contested
19 Congressional elections in Virginia between 1870 and 1890,
20 roughly. But the direct answer to your question is yes.

21 John Mercer Langston, who was well educated. He had,
22 I think, gone to -- a lawyer. Was the President of
23 Virginia State College for Negroes. Actually ran for
24 Congress from I think it the Fourth District in Southside.
25 Maybe the Fifth. But one of those two districts.

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1 And he was not declared the winner initially, but
2 there was an investigation in the House of
3 Representatives, because there was all sorts of
4 allegations of vote fraud, et cetera, et cetera. And he
5 was actually finally declared the winner of that
6 congressional seat. But by the time we declared the
7 winner, there were only about six months left in his term.

8 So in 1890 -- he ran for reelection in 1890. So it
9 was originally the 1888 election that he took part in. In
10 the 1890 reelection, there was a vicious campaign led in
11 part by the Richmond newspaper, sort of summarized that
12 said, look, this man has accomplished as much as anyone
13 possibly could who is African-American, or otherwise; but,
14 nevertheless, we can't have blacks participating in
15 politics because all it does is lead to fraud and
16 corruption in most of the electorate poll.

17 So Langston actually lost his reelection bid in 1890.
18 And of course, there were no other African-Americans
19 elected to Congress from Virginia until a century later.

20 Q All right. So we've moved sort of towards the end of
21 the 19th century. And you've described the participation
22 of blacks in politics. Was this a response to the black
23 electoral success that you just described?

24 A Sure. Absolutely. And, you know, the response on
25 one level, as I mentioned, was a lot of vote buying,

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1 election rigging, violence at the polls. But in 1894, the
2 state did take the first legislative step and pass what
3 was known as the Walton Act. And as I understand, the
4 Walton Act essentially required that ballots be filled out
5 in private, which most of us would today think of course
6 that's what we do. But it required that there be no
7 symbols or party markings that went along with the names.

8 And illiteracy rates were quite high at the time.
9 They were high amongst whites, but they were even much
10 higher amongst with African-Americans. And so what the
11 Walton Act did was it meant that -- it also it did provide
12 for electoral marshals, I think they were called at the
13 time, to assist people with the ballot who were
14 illiterate. But the way it was actually put into practice
15 and carried out, African-Americans were not able to get
16 that assistance, and so they were faced with a ballot with
17 a list of names that they could not read. Whereas white
18 voters who were illiterate, were able to get help in
19 identifying who was the person that they were trying to
20 look for.

21 So the Walton Act alone actually lowered the number
22 of black voters quite significantly in the 1890s even
23 prior to the 20th century.

24 Q Were there other responses to the black electoral
25 success of the earlier part of the 19th century?

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1 A Well, I think getting to -- in the wake of the Walton
2 Act, the most significant event, of course, is the
3 adoption of a new constitution. The 1901 and 1902
4 constitution. The Convention took a year. It met in
5 Richmond over the course of 1901 to 1902. So it's
6 actually -- the constitution itself was adopted in 1902.

7 And it was pretty clear. And there was no real
8 effort to hide the purpose. And the constitution did a
9 number of things. But first and foremost, it created a
10 new suffrage system in Virginia. And the proponents of
11 this knew and understood that the Fifteenth Amendment
12 forbid them from denying the right to vote to someone
13 based solely on race, so they had to come up with a series
14 of mechanisms to achieve that purpose without actually
15 specifically identifying race as the reason for doing so.

16 This was made possible by -- Mississippi had adopted
17 a similar plan, which the Supreme Court in 1898
18 essentially said, well, we'll allow it because it doesn't
19 specifically identify race as the cause of the
20 disenfranchising people.

21 Q And what types of devices were you --

22 A So there was a series. So the primary mechanisms
23 that were used were a series of literacy tests,
24 understanding clauses, and then of course the poll tax.
25 And so the literacy tests with -- and I'm sure you've had

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1 other individuals who may have testified about their own
2 experience with this, or their own family member's
3 experience, the literacy test basically left an enormous
4 power up to local registrars. So the local registrars
5 could -- when a person comes in to vote, they're asked to
6 fill out, and provide, a certain amount of information.
7 And then the registrars, it was up to them to ask them
8 what kind of questions they would ask voters. And based
9 on their answers to those questions, they would either
10 register them or not.

11 And so quite typically, white voters would get a
12 piece of paper and ask for, you know, their name and their
13 address and whatever basic information. Black voters
14 often would come in and just be handed a blank piece of
15 paper and told to fill out the necessary information,
16 without really knowing what that information was.

17 If they were able to do that, they were then often
18 sometimes asked questions about the U.S. Constitution that
19 maybe someone who had just studied the Constitution that
20 week, or someone who was a Constitutional lawyer might now
21 the answer to, but a lay person would not. And sometimes
22 they were asked ridiculous questions such as, you know,
23 how many jelly beans are in this jar. How many bubbles in
24 a bar of soap, was one example I came across. So the
25 registrars, through those mechanisms, have remarkable

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1 power to decide who would vote and who wouldn't.

2 Now, as I said earlier, literacy -- illiteracy was
3 quite high, even amongst whites. And so that's why sort
4 of a series of follow-up questions were necessary to make
5 sure that all illiterate whites were not disenfranchised
6 as well, and why was it that African-Americans were
7 disenfranchised at a much, much higher rate.

8 On top of the literacy tests, and then in the 1902
9 constitution, the state also imposed a poll tax. There
10 had been a poll tax in the 1870s briefly, but the
11 readjusters, actually, had abolished that. And then the
12 1902 constitution provided for a poll tax which took
13 effect in 1905.

14 There are a number of other states, of course, that
15 had poll taxes. But what was interesting or most
16 problematic, or most effective, I should say, about
17 Virginia, is that it required to be paid three years in a
18 row, and six months in advance of an election. So even if
19 an individual paid their poll tax this year, if they
20 hadn't paid it last year, and the year before, which might
21 not be election years, they had to either -- they wouldn't
22 be able to vote unless they were able to pay the back
23 taxes.

24 COURT REPORTER: Sir, slow down.

25 THE COURT: So you had to pay for three years before

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1 you could initially vote?

2 DR. SMITH: That -- I think when you first -- that's
3 a great question. And the very first -- I don't -- the
4 very first year I don't know how that was actually
5 implemented. That's a good question. I would have to go
6 back and doublecheck about that.

7 THE COURT: All right.

8 DR. SMITH: I don't actually know whether there was
9 some leeway. The fact that they -- I actually think, yes,
10 because the poll tax didn't become effective until 1905,
11 which was three years later. So I think the idea was that
12 people did have to pay in 1903 and 1904 and 1905 before
13 voting. But I would -- that's one that I'm not 100%
14 certain about that.

15 THE COURT: Okay.

16 Next question, Ms. Branch.

17 BY MS. BRANCH:

18 Q Now, you mentioned that Virginia adopted a new
19 constitution during the 1901 and 1902 Constitutional
20 Convention. Your expert report has already been moved
21 into evidence earlier during the proceedings, and so I
22 want to refer to a specific page in your expert report
23 which I think you should have a set of exhibits at the
24 witness stand. It's going to be Plaintiffs' Exhibit 208.

25 THE COURT: Do you want that presented to the

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1 witness?

2 MS. BRANCH: Yes.

3 THE COURT: All right. Well, we have had numerous
4 binders of exhibits brought in by a wheel barrel.

5 MS. BRANCH: May I approach?

6 THE COURT: Sure. Go ahead.

7 MS. BRANCH: It's Plaintiffs' Exhibit 208.

8 BY MS. BRANCH:

9 Q Dr. Smith, if you could open to Tab 208. Do you
10 recognize this document, Dr. Smith?

11 A Yes.

12 Q And what is it?

13 A This is the initial report that I prepared in
14 connection with this case.

15 Q And is it a true and accurate copy of your expert
16 report in this case?

17 A I would assume so. Yes.

18 MS. BRANCH: Your Honor, I would like to move
19 Dr. Smith's initial expert report dated December 14, 2015,
20 into evidence.

21 MR. FINBERG: I think, Your Honor, pursuant to the
22 stipulation we reached this morning, all the expert's
23 reports are in evidence at this point.

24 THE COURT: All right. That's fine. It will be
25 admitted.

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MS. BRANCH: Thank you, Your Honor.

(Plaintiffs' Exhibit 208 is received.)

BY MS. BRANCH:

Q Dr. Smith, could you turn to Page 11 on your report. And it looks like there is a quotation at the top of that page.

A Yes.

Q Who -- who made this statement?

A So this is a fairly well-known statement now made by Carter Glass, who was a member of the Virginia Senate, and a newspaper publisher in Lynchburg who went on to serve in Woodrow Wilson's cabinet, and was a United States Senator for about a quarter a century until his death in 1946. And he was one of the most prominent leaders of the Democratic Party in Virginia.

Q Okay. I'm going to go ahead and read this, this statement. And this was made at the 1901, 1902 Constitutional Convention, is that correct?

A Correct.

Q It says:

"By fraud, no; by discrimination, yes. But it will be discrimination within the letter of the law, and not in violation of the law. Discrimination! Why, that is precisely what we propose; that, exactly is what this Convention

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1 was elected for - to discriminate to the very
2 extremity of permissible action under the
3 limitations of the Federal Constitution, with a
4 view to the elimination of every negro voter who
5 can be gotten rid of, legally, without
6 materially impairing the numerical strength of
7 the white electorate. As has been said, we have
8 accomplished our purpose strictly within the
9 limitations of the Federal Constitution by
10 legislating against the characteristics of the
11 black race, not against the 'race, color of
12 previous condition' of the people themselves.
13 It is a fine discrimination, indeed, that we
14 have practiced in the fabrication of this plan;
15 and now, Mr. President, we ask the Convention to
16 confirm our work and emancipate Virginia."

17 Did I read that accurately?

18 A Correct.

19 THE COURT: Now, Dr. Smith, was this a comment that
20 Senator Glass made on the floor?

21 DR. SMITH: Yes, sir. This comes directly out of the
22 very long detailed transcript of the debates at the
23 Constitutional Convention of 1901 and 1902.

24 THE COURT: All right. And how many years did
25 Senator Glass serve in the Senate, do you know, sir?

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1 DR. SMITH: Well, in the state, I'm not -- in the
2 state Senate, off the top of my head, I don't recall. He
3 served in the United States Senate from, I think, 1921 to
4 1946. So 25 years, give or take. I may be off by a year.

5 THE COURT: Go right ahead.

6 MS. BRANCH: Thank you.

7 BY MS. BRANCH:

8 Q And, Dr. Smith, why did you choose to include that
9 quotation in your report?

10 A Well, I think I -- in all of the work I've done,
11 looking at race and politics in Virginia, to this day I've
12 never found a statement so, A, boldly honest. But, B,
13 clearly indicative of what was at work here and what was
14 at play. And that there was -- you know, Carter Glass,
15 and his contemporaries, certainly felt no need to pretend
16 they were doing anything other than what is described in
17 this plan. It was quite -- like I said, we noted in the
18 Federal Constitution, it imposes some limitations on us,
19 i.e., the Fifteenth Amendment, but we're going to do
20 whatever we can to get around that, and certainly to
21 violate the spirit of the Fifteenth Amendment. And that's
22 what was accomplished here quite successfully.

23 And I would just point out, you know, to that point
24 whereas there were roughly 147,000 or so black voters
25 registered in Virginia at the time of the Convention, that

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1 number dropped to about 21,000 by 1902. And after the
2 poll tax went into effect, that was half again. There
3 were only, I think, 10,500 or so voters, black voters,
4 registered in Virginia from that point forward.

5 THE COURT: Dr. Smith, what year did Senator Glass
6 make this comment?

7 DR. SMITH: This would have been -- this was in 1902.
8 And it would have been between -- it was in June of 1902.
9 It was the very, very end of the Convention right before
10 they put the suffrage piece of it up for a vote. This was
11 sort of their closing comment in the suffrage debate.

12 THE COURT: Thank you.

13 BY MS. BRANCH:

14 Q Dr. Smith, at a high level, how would you describe
15 how African-American political participation changed over
16 the course of the reconstruction era?

17 A Well, I think you see, you know, initial -- a
18 remarkable level of enthusiasm, excitement, an ability to
19 participation in elections - and then met fairly quickly
20 by a backlash. And there's a lot of back and forth. It's
21 certainly up and down in terms of there is no direct
22 straight line of progress here. It's back and forth
23 constantly facing obstacles, reasserting rights, losing
24 those rights. And then, you know, in the early 1890s,
25 early 1900s, they end up losing most of those rights for a

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1 considerable amount of time.

2 Q Let's turn now to the Jim Crow era. So this is from,
3 as you know, the Constitutional Convention which occurred
4 in 1901, to the middle of the 20th century. Could you
5 briefly describe that period in the history of Virginia?

6 A Well, sure. So the Jim Crow period is characterized
7 by, one, the disfranchisement of African-Americans, which
8 we just touched upon. And also, the introduction and
9 implementation of a series of segregation statutes. So
10 the law is more commonly referred to as Jim Crow laws.

11 Virginia passed its first Jim Crow laws, I think, in
12 1900 which involved railroads. Segregating
13 African-Americans from whites on railroads. And there
14 were a number of other laws that were passed as well
15 involving, you know, public spaces and various
16 municipalities.

17 In Virginia, it's interesting to note that actually
18 the most draconian Jim Crow statutes actually were passed
19 in the 1920s, and not around the 1900s. So
20 disenfranchisement occurred first, 1902. And then in the
21 1920s, Virginia passed what has often been referred to,
22 maybe not often, but what has been referred to as the most
23 draconian anti-miscegenation statute in American history,
24 which is the Racial Integrity Act of 1924.

25 And the Racial Integrity Act essentially sought to

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1 redefine who was black and who was white. Up until that
2 time, Virginia defined a black person as someone who had
3 1/8th, or more, of black blood. And anybody else, if you
4 had less than 1/8th black blood, you would be considered
5 white.

6 In the 1920s in response to, as it turned out, an
7 incorrect concern that mixed race persons were passing as
8 white, there was an organization based here in Richmond
9 called the Anglo-Saxon Clubs of Virginia, which was, for
10 lack of a better phrase, sort of a highfalutin version of
11 the Klu Klux Klan, if you will. And the Anglo-Saxon Clubs
12 believe that maintaining the integrity of the white race
13 was paramount. And based on eugenics was popular, sort of
14 it was very popular scientifically at the time, not just
15 in the south, but throughout the north, and much of the
16 western world. The eugenics theory, you know, said that
17 even one drop of black blood will pollute white blood, if
18 you will.

19 And so Virginia passed the Racial Integrity Act,
20 which redefined who was white. Basically because a white
21 person, you could not have a single drop of black blood
22 and still be considered white.

23 In that law, there actually turned out to be a
24 loophole there because certainly the proponents of that
25 law assumed that anyone who had between one drop of black

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1 blood and 1/8th of black blood would be redefined as
2 black, having previously defined as white. But the law
3 didn't actually state that. So, actually in 1930, they
4 had to fix that. And so from 1930 on, Virginia did have
5 essentially a one drop rule.

6 That Act also said that a person who is white could
7 not marry somebody who was not white, hence the
8 prohibitions against marriage between blacks and whites.
9 Virginia did carve out one exception, which was that there
10 were many people in Virginia who were quite proud of their
11 heritage of descending from Pocahontas and John Rolfe, and
12 so Virginia created what was called The Pocahontas
13 Exception. That's what it was referred to at the time.
14 There were a lot of persons with a certain amount of
15 Indian blood, but no black blood, could still be
16 considered white.

17 In addition to the racial integrity statutes, in
18 1925, Virginia passed the Massenburg Public Assemblages
19 Law, which basically said that blacks and whites must not
20 be allowed to sit next to each in any public place. So
21 that would have been concert halls, movies theaters. Any
22 other public place.

23 And the impetus for the Massenburg Law was an
24 incident that took place at Hampton Institute. Hampton,
25 of course, was a college for black students. There were

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1 many white patrons who supported the school. And in one
2 case, a white woman whose husband was a newspaper
3 publisher in Newport News, went to a dance recital at
4 Hampton. She was late. The only available seat was next
5 to an African-American patron. She objected, her husband
6 objected, and actually launched a campaign, which led to a
7 year later the passages of Virginia's Public Assemblages
8 Law, which remained on the books until the passing of the
9 Civil Rights Act in the 1960s. So you had a series of
10 quite significant legislative acts taken by the state.

11 I should add, in the 1920s, the one piece of
12 legislation that was seen as, and certainly at the time
13 as, protecting African-Americans with the passage of an
14 anti-lynching law in 1926. Virginia was -- I think it was
15 the first state to make lynching a state crime.

16 And it occurred at the end of a series of five or six
17 lynchings that had taken place, sort of one a year,
18 throughout the 1920s, which business leaders, political
19 leaders were concerned with besmirching the state's name,
20 its reputation, at the time when they were trying to
21 attract business from the north. And so they did pass an
22 anti-lynching law in 1926.

23 Ironically, that law was actually never used to
24 prosecute white persons for committing violence against a
25 black person. In the 1930s, there was a couple of cases

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1 that evidence points to them having been lynchings, but
2 the law was never used. The only time the law, to my
3 knowledge, was ever used was to put down the labor
4 strikes.

5 THE COURT: Show down a little bit.

6 A -- put down the labor strikes in the late 1930s and
7 1940s.

8 So those are sort of the core legislative acts, the
9 laws that were put on Virginia's books, during the height
10 of the Jim Crow period, and remained in effect, all of
11 those, into the 1960s.

12 Q And you mentioned the 1924 Racial Integrity Act. Was
13 there an agency that was created in connection with that
14 law?

15 A Yes. Well, the Bureau of Vital Statistics --

16 THE COURT: I didn't hear your question. Could you
17 repeat it, please.

18 MS. BRANCH: Sure.

19 BY MS. BRANCH:

20 Q Dr. Smith, you mentioned earlier the 1924 Racial
21 Integrity Act. Was there an agency that was created in
22 connection with that law?

23 A All right. So the Bureau of Vital Statistics, which
24 was -- already existed. It wasn't created specially, but
25 it did -- it did -- it was a state agency that enforced

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1 the law, if you will. And in particular, the Director of
2 Bureau of Vital Statistics, a doctor by the name of Walter
3 Plecker, really made it his mission to insure that no
4 person, as he saw it, who had any black blood, would you
5 be able to pass as white in Virginia.

6 And he really -- he and his staff made it their
7 mission to look at all genealogical charts, look at old
8 birth certificates to try to build a case and prove that
9 somebody was white. The presumption being that you were
10 actually guilty until proven innocent.

11 And one of the big problems with what Plecker was
12 doing is that from I think it's 1896 to 1912, so in that
13 16-year period, there were no records kept. There were no
14 birth or marriage records kept by the state of Virginia.
15 So he actually had a pretty big gap.

16 So when those people started having children in the
17 1920s and 1930s, Plecker was often just going -- basing
18 his decisions on antidote, on appearance, without actually
19 having real evidence. And so for, you know, hundreds of
20 Virginians, there were quite severe consequences. He
21 would write people and say you've registered as white, our
22 records show that you're black. You can't go to white
23 schools. You cannot enjoy any of the privileges of white
24 citizenship. And he remained in office until he died in
25 the 1940s.

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1 Q Dr. Smith, could you turn to Page 25 of your report.

2 THE COURT: Of your Exhibit 208?

3 MS. BRANCH: Yes. This is Plaintiffs' Exhibit 208 on
4 Page 25.

5 BY MS. BRANCH:

6 Q And I'd like to focus your attention on the end of
7 that last paragraph, the third paragraph on Page 25.

8 A Sure.

9 Q And it kind of bleeds into Page 26.

10 And this is, as I understand, a letter that Walter
11 Plecker wrote to a citizen of Virginia. And could you
12 explain the significance of this letter, and why you
13 included it in your report?

14 A Sure. Well, this is an example of the work that
15 Plecker was doing, and the work that he -- what he saw as
16 his charge in enforcing the Racial Integrity Act. And
17 this comes right out of the -- this particular letter,
18 I'll have to look and see where I actually found it. It's
19 his letter that he wrote to a person -- the point I was
20 going to make is that most of the records from the Bureau
21 of Vital Statistics were either destroyed or they're not
22 available. But Plecker sent copies of much of his
23 correspondence to John Powell, who is an internationally
24 renowned Richmond pianist, who was actually the head of
25 the Anglo-Saxon Club. So the only reason we actually have

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1 this documentation anymore is because he had shared it
2 with John Powell, whose papers are at the University of
3 Virginia.

4 And there's many others like this. But this is an
5 example of Plecker. You know, he said that he was
6 objecting to the fact that this particular couple had
7 registered their child as white. He said that according
8 to the Lynchburg Health Department, though, her husband is
9 actually black. *"This is to give you warning that this is*
10 *a mulatto child and you cannot pass it off as white."*

11 *"It is an awful thing."*

12 And then he warns the midwife that, you know, *"it is*
13 *a penitentiary offense to willfully"* misstate the color of
14 the child whose birth she had attended.

15 Q So you've described several Jim Crow laws that were
16 enacted during this period. What was the effect of these
17 laws on African-Americans in Virginia?

18 A Well, along with the disfranchisement Constitution of
19 1902, it absolutely, you know, cemented African-Americans
20 as second-class citizens. And as Plecker points out in
21 that letter, it mean that African-American, you know -- in
22 this particular case, it only affected, you know, mixed
23 race kids, but they were then sent to black schools which
24 everybody knew were inferior. That African-American
25 educational opportunity were paled in comparison to white

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1 opportunities. That had an affect, of course, on jobs, on
2 incomes, on housing, and the generational affects, you
3 know, spirals.

4 There's no other way to look at this other than a
5 state regime guaranteeing second-class citizenship for a
6 class of citizens.

7 Q And what area of life would you say the Jim Crow laws
8 were felt most significantly?

9 A Well, that's a hard question to answer because, you
10 know, there were the daily indignities that your hear
11 people report regularly about the daily indignities of
12 life under Jim Crow. But certainly the issue that seemed
13 to galvanize African-Americans most significantly was
14 education. And the idea that their children weren't --
15 you know, the amount of money being spent on black
16 education was so small and so paltry.

17 There were some locals which did not even spend the
18 amount of money per black child that they got from the
19 state. So if the state contributed \$6 per child, they
20 were spending less than that. And I'm just using that as
21 an example.

22 So certainly education was an area in which I think
23 African-Americans recognized that they -- that the -- you
24 know, the notion behind segregation was supposed to be
25 that separate facilities were supposed to be equal because

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1 the Supreme Court had recognized in *Plessy v. Ferguson*
2 that there was nothing equal about segregation from day
3 one.

4 COURT REPORTER: Slow down, please.

5 Q So moving forward a little bit. Did there come a
6 point when African-Americans started reasserting their
7 claim to the right to vote, and to be active in other
8 areas of life?

9 A Sure. And I think of the things that's actually
10 quite interesting about Virginia is that usually the
11 narrative that is taught in high schools, and even
12 introductory college courses, sort of suggest that once
13 the Jim Crow system is in place that nothing really
14 changes until the 1950s and post-World War II, and the
15 advent of the Civil Rights Movement. But Virginia is
16 actually quite interesting in that in the 1930s you
17 actually really begin to see a blossoming of activism.
18 Not in all of Virginia. Certainly, in rural areas, in the
19 Southside, there would have been very little, you know, to
20 have in any way, shape, or form, whether it's to try to
21 vote or to express dissatisfaction would have -- could
22 have meant, you know, violent harm.

23 But in the cities, and places like Northern Virginia,
24 a little bit in Richmond, and certainly in the Norfolk
25 area, you began to see in the 1930s increasing activism on

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1 the part of African-Americans demanding the right to vote,
2 demanding to right to equal educational facilities.

3 There's actually a court case filed here in Richmond
4 in which a black plaintiff succeeded in Federal District
5 Court to guarantee that he would be allowed to vote in
6 what would have been the all white Democratic primary.
7 The primaries were all white.

8 And it was interesting that at time instead of
9 fighting the case, the Democratic officials led by Harry
10 Byrd decided just to let it go because they knew that --
11 you know, because of the registration laws, the literacy
12 test law, that very few African-Americans would be able to
13 vote. So they kind of just let that one pass.

14 In the mid-1930s, Alice Jackson, another resident of
15 Richmond, applied to the University of Virginia, who had
16 never admitted a black student. She was turned down, but
17 that made some headlines.

18 A couple years later in Alexandria, a group of young
19 African-American men sat down at the Alexandria library to
20 demand equal facilities, equal library facilities. And
21 about the same time in Norfolk, there was a series of
22 protests around the firing of an African-American teacher
23 who had -- was fired because she had allowed herself to be
24 used as a plaintiff in a case that was going to require
25 equal salaries for black and white teachers with the same

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1 qualifications. She was fired, but a subsequent plaintiff
2 was found, Melvin Austin, and sent the case *Austin v.*
3 *Norfolk*, which was decided in the District Court and in
4 the Appeals Court in 1940. And it was not appealed to the
5 Supreme Court.

6 But that was sort one of the first big steps in the
7 equalization strategy that the NAACP was following, trying
8 to equalize facilities. So there was -- even prior to
9 World War II, there was a great deal starting to happen.

10 Q And so it sounds like you've described events leading
11 up to the *Brown v. Board of Education* case in 1954, is
12 that correct?

13 A Yes. And I've talked about certainly the Norfolk
14 case is the first step in that. I think, you know, by the
15 late 1940s, there were equalization suits clogging the
16 dockets of Virginia's courts.

17 Where, you know, Oliver Hill, who was the leading
18 NAACP attorney told me one time when I had a chance to
19 interview him, that World War II actually interrupted the
20 work they were doing because they had started all these
21 suits. In the late 1940s, there were these suits, you
22 know, filed all over the state alleging, you know, unequal
23 facilities in education.

24 Q And so *Brown v. Board* came down in 1954, and how did
25 Virginia respond to *Brown*?

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1 A Well, Virginia -- and we should -- I think it's
2 helpful to keep in mind that the *Brown* case itself came
3 from Kansas, but it was one of just five cases that had
4 been bundled together, and one those did come from
5 Virginia. The *Davis* case from Prince Edward County was
6 one of the cases clumped together as part of the *Brown*
7 decision.

8 And, you know, Virginia did not respond well. There
9 was an initial -- an initial thought that perhaps, you
10 know, Virginia would allow Arlington, for instance, who
11 made it clear that it was prepared to admit some black
12 students into white schools. So there was an initial
13 response that perhaps would allow local options -- it
14 would allow areas of Virginia that were ready for this to
15 integrate or desegregate on a small basis, but certainly
16 not in parts of the state that did not want to.

17 But even that initial plan was chucked aside in early
18 1956 when Senator Harry Byrd led Virginia, and the south,
19 down the path of what comes to be known as Massive
20 Resistance. So Massive Resistance to the Supreme Court's
21 decision.

22 And that then led in Virginia to a special session of
23 the legislature which convened in August of 1956. And
24 that legislature passed what often was referred to as the
25 Massive Resistance Laws or the School Closing Laws. And

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1 what those laws did was to require the governor to close
2 any school in the state where District Courts ordered
3 black students into those -- into those schools.

4 There was a last ditch effort in that special session
5 to amend the law to allow for some local options, that,
6 Arlington, for instance, could go ahead and desegregate,
7 which proponents said that will get the courts off our
8 back. If we allow Arlington to allow limited
9 desegregation, then that will satisfy the Supreme Court's
10 requirement.

11 But the legislature in special session of 1956
12 rejected that local option amendment. They passed the
13 School Closing Law which required the governor to close
14 any states -- sorry, close any schools in which black
15 students were ordered admitted.

16 Q And so you've describe the period of Massive
17 Resistance. Did that period end at a certain point?

18 A Well, eventually. So what happened after the passage
19 the School Closing Laws is that then the NAACP has to go
20 back to court and file individual lawsuits in the
21 individual school districts to try to force desegregation.
22 That process takes a while. And it was not until October
23 -- I believe it was October, the fall of 1958, when
24 Federal District Court judges did order black students to
25 be admitted to public schools in Charlottesville, Norfolk,

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1 and Warren County. So in those three jurisdictions.

2 And with that, Lindsay Almond, who by then was the
3 governor, ordered those schools closed. So Virginia did
4 in fact close schools in the fall of 1958 in response to
5 the order for integration. Those schools remained closed
6 for three months until January of 1959 when both state and
7 Federal Courts, more or less simultaneously, issued a
8 series of rulings that said the Massive Resistance Laws
9 were unconstitutional.

10 THE COURT: Doctor, would you go back again. What
11 law was declared to be unconstitutional?

12 DR. SMITH: The School Closing Laws. The Massive
13 Resistance Laws that were passed during the special
14 session of 1956.

15 THE COURT: Go ahead.

16 A So once -- so in January of 1956 -- sorry, January of
17 1959, the School Closing Laws were ruled unconstitutional.
18 And that was sort of the official end of Massive
19 Resistance, if you will, but certainly hardly the end of
20 the issue.

21 Prince Edward County actually chose to close its
22 schools for five years rather than complying -- rather
23 than opening public schools on a desegregated basis. They
24 simply closed their school system from 1959 to 1964.

25 So there are, you know, a generation of students not

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1 a whole lot older than I am who if they were in Prince
2 Edward County, did not have access to a public school
3 education. And many of the white students, there were a
4 number of private academies set up to accommodate them.
5 Some black parents were able to get their kids admitted to
6 neighboring county's schools, schools in neighboring
7 counties, or to send them to live with out of state
8 relatives. But there were -- for those five years, there
9 was no public education provided for the Prince Edward
10 County students.

11 So the ending comes closely. It's -- certainly
12 there's is a great deal of reluctance amongst, you know,
13 Virginia officials to comply with the court orders. There
14 were many, including Senator Byrd, who thought that the
15 state should continue to resist. Finally, once the
16 publicity got bad enough, business leaders stepped in and
17 said, you know, enough is enough. We need to comply with
18 the court orders. And we want Virginia to be seen as a
19 good place to live and to do business.

20 Q Was there legislation passed in the 1960s that
21 changed the course of Virginia's history?

22 A Sure. And I think in this case, it's primarily
23 legislation coming from -- legislation and court orders
24 from outside Virginia that are most significant. I tried
25 in my original report just to briefly summarize them. But

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1 most importantly, there is the ratification of the
2 Twenty-fourth Amendment in early 1964 which abolished the
3 poll tax in all Federal elections. And that's crucial
4 because it did not affect state elections.

5 Later that same year, in June of 1964, the Supreme
6 Court handed down its reapportionment decisions in *Brown v.*
7 *Sims*. Again, one of those cases, just as with *Brown*
8 actually came from Virginia, the case of *Davis v. Mann*
9 dealt with malapportionment in Virginia.

10 So the Supreme Court established the principle of one
11 person one vote in all redistricting. Just weeks later,
12 Congress passed the Civil Rights Act which abolished
13 Virginia's Massenburg Law.

14 In 1965, of course was the passage of the Voting
15 Rights Act. I'm sure we'll talk more about that. In
16 1966, the Supreme Court in the case of *Harper v. Virginia*
17 *Board of Elections* abolished the poll tax in state
18 elections. And that was certainly significant.

19 In Virginia -- you know, many of these cases were
20 coming from Virginia. In 1967, the Supreme Court in the
21 *Loving* decision abolished the anti-miscegenation statute.
22 So that put an end to Virginia's Racial Integrity Laws.

23 And then finally in 1968, another case from Virginia,
24 *Green v. New Kent County*, which is widely considered to be
25 the most important education decision after *Brown* really

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1 put an end to the stalling tactics that most jurisdictions
2 had been using. So even though *Brown* comes down in '54,
3 there was very, very, very little desegregation of the
4 schools throughout Virginia because various freedom of
5 choice plans that allowed parents to send their kids to
6 segregated -- or continue to send them to segregated
7 schools. So that comes down.

8 So all of those decisions between 1964 and 1968 with
9 both court decisions and judicial action, judicial action
10 and legislative action, really forced significant change.
11 Virginia did not go lightly in this regard. When it was
12 clear that the Twenty-fourth Amendment was about to be
13 ratified in late 1963, the Virginia legislature actually
14 met in special session and passed a Bill which said that
15 rather than just simply going along with the Twenty-fourth
16 Amendment said that the Bill actually said that if you
17 want to continue to vote in a state election -- or sorry.
18 To vote in a Federal election, you have to actually be
19 current on your poll tax, your state poll tax, or you have
20 to sign a certificate of continuing residence, I think it
21 was called, which essentially had to be filed six months
22 in advance of an election, and asserted that you were in
23 fact a resident of this jurisdiction. So it was a clear
24 effort to circumvent the abolition of poll tax.

25 And it was actually Republicans in 1964 who went to

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1 court to have this Bill struck down. And they were
2 successful in that. They got an Appeals Court ruling
3 right away that struck the Bill down in time for the 1964
4 elections so that you did not have to pay a poll tax for
5 the 1964 general election.

6 And then Supreme Court actually issued a ruling in
7 the spring of 1965 affirming that lower court decision.
8 And in that decision, Earl Warren actually quoted, and
9 cited the very same Carter Glass quote that we had up on
10 the screen a few minutes ago, making clear that Virginia's
11 long history of racial discrimination was very much
12 relevant to this decision, and this was yet another
13 obstacle being placed in the way of African-American
14 suffrage.

15 Q So I want to shift now to post-Voting Rights Act,
16 post-1965 history, but before I do that, do you have an
17 opinion as to whether the history that you've just
18 described has had an affect on life in Virginia today for
19 Virginians?

20 A Well, I mean, I'm a historian, so I'm trained to
21 think about the historical relevance, and to think about
22 the ways in which, you know, change over time is connected
23 with the present. So, yes, I mean, absolutely, on some
24 different levels.

25 As I said earlier, there are -- I was born in 1965.

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1 So anybody older than me has had some experience. Anybody
2 older than me who has lived in Virginia has had some
3 experience with issues of segregation and desegregation.
4 And it wasn't until 1973 when I was in 3rd grade that my
5 school in Alexandria was desegregated. It took that much
6 time to finally happen.

7 So I think for anybody who, you know, is roughly 50
8 years or older now, there's a very, you know, absolute
9 reality to the system of Jim Crow and to second-class
10 citizenship. And those things have -- you know, whether,
11 for instance, the students who didn't get to go to school
12 in Prince Edward County for five years, certainly that
13 affected their education, it affected their future
14 earnings, their future income, they're ability to provide
15 for families in the future. So, absolutely, I see a
16 tremendous affect.

17 I think it's not coincidental that African-Americans
18 today by, you know, any study you look at that measures
19 home ownership, that measures income, that measures
20 employment, et cetera, et cetera, shows that
21 African-Americans trail whites significantly. And
22 certainly the Jim Crow system bears on that.

23 MS. BRANCH: I have just been informed that Delegate
24 Lopez has arrived, and is ready for his direct
25 examination.

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1 THE COURT: All right. Fine.

2 Dr. Smith, we need to take a witness out of chair.

3 Would you be kind enough to step down.

4 DR. SMITH: Certainly.

5 THE COURT: We'll get back to you shortly, all right?

6 DR. SMITH: Sure.

7 THE COURT: Delegate Lopez, if you would be kind
8 enough to raise your right hand, place your left hand on
9 the Bible, and face the Clerk of the Court.

10 THE CLERK: You do solemnly swear that the testimony
11 which you are about to give, in this case, before this
12 Court, shall be the truth, the whole truth, and nothing
13 but the truth, so help you God?

14 DELEGATE LOPEZ: I do.

15 THE COURT: Have a seat on the witness stand, sir.

16 Actually, would you put your full name on the record
17 please, and spell your last name for the court reporter.

18 DELEGATE LOPEZ: Certainly.

19 Alfonso Hoffman Lopez. My last name is spelled
20 L-O-P-E-Z.

21 Whereupon, **Delegate Alfonso Lopez**, having been
22 duly sworn in, testifies as follows:

23 DIRECT EXAMINATION

24 BY MS. CALLAIS:

25 Q Delegate Lopez, how are you currently employed?

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1 A I'm a member of the Virginia House of Delegates. I
2 represent the Forty-Ninth House of Delegates District,
3 Arlington and Fairfax counties.

4 Q And for the record, what political party are you a
5 member?

6 A I'm a Democrat.

7 Q And also for the record, what is your race?

8 A Latino.

9 Q Delegate Lopez, how long have you served as a
10 representative for Virginia's Forty-Ninth Delegate
11 District?

12 A I was elected in -- this is my fifth term. So I was
13 elected in 2011. And I was first sworn in in 2012.

14 Q And how many times have you run for that seat?

15 A One primary, and three general elections.

16 Q And have all of those been contested?

17 A No. My first primary, of course, was contested.

18 There was no opponent in the general election in 2011. In
19 2013, I did have a contested general election, but I had
20 no contested election in 2015.

21 Q And, Delegate Lopez, in the process of running for
22 office and running for your seat, have you engaged in
23 voter registration work?

24 A Yes. Almost constantly. Voter registration work and
25 get-out-the-vote.

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1 Q And have you also reviewed polling data for your
2 district?

3 A Yes.

4 Q And throughout the course of your work, do you
5 interact directly with the constituents in your district?

6 A Yes. I go door-to-door, phone banking, phone
7 calling, meeting folks at events, at parks, at festivals
8 in my district on a fairly regular basis.

9 Q And can you just describe generally the
10 characteristics of your district for the Court?

11 A My district is really the rich tapestry of what
12 Virginia is becoming. There are 100 languages spoken in
13 my district, 58 languages in my local high school,
14 Wakefield High School. And we have every level of
15 socioeconomic. We have people who live in McMansions,
16 people who are living with the help of a social safety
17 net.

18 Q And do you know what proportion of your district is
19 comprised of minorities?

20 A My district is just slightly -- a majority white, but
21 there's a sizable Latino population, a sizable Asian
22 population, a sizable African-American population. But we
23 have -- they refer to my district as the world in a zip
24 code - 22204. You've got literally folks from every
25 corner of the globe.

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1 Q And can you just give a brief description as to the
2 geographic confines of your district?

3 A My district goes from Pentagon City in Arlington, all
4 the way to Bailey's Crossroads in Fairfax, with Columbia
5 Pike as basically the spine of my district. I mean, you
6 can -- it's relatively small compared to other districts
7 around the state.

8 Q Prior to being elected to office, Delegate Lopez, did
9 you engage in any other types of political activities?

10 A Yes. I did -- I was very involved for almost two
11 decades working from a precinct captain to being a deputy
12 chair of the Arlington Democratic Party, to being on the
13 -- I was the young Democrat of the Year for Virginia in
14 2004. I was also in the State Central Steering Committee
15 for several years for the DPVA. I was on the State
16 Central Committee for several years. I was also the chair
17 and president of the Democratic Latino Organization of
18 Virginia. And I was also an at-large member of the
19 Democratic National Committee representing Virginia for a
20 few years.

21 Q And throughout that work, did you engage in any voter
22 registration work?

23 A Yes. Constantly. Everything. We're constantly
24 trying to get folks engaged with the Democratic Party and
25 getting them excited about voting and getting them excited

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1 about the next campaign and the next election.

2 Q And did you also engage in get-out-the-vote work?

3 A Yes. Yes. That's almost entirely what we did.

4 Q And did any of your registration, or get-out-the-vote
5 work, focus on any particular population of individuals?

6 A I personally did a lot of work with the Latino
7 community, especially when I was the chair and president
8 of the Democratic Latino Organization of Virginia. I
9 wanted to make sure that we were focusing on its
10 population because it was growing in Virginia, and
11 because, as the polls bear out, 79% have been voting for
12 Democrats in years past.

13 Q And did you ever work with any young voters when you
14 were conducting your previous political activities?

15 A Yes. I was the former president of the Young
16 Democrats of Arlington, as well. And when I was working
17 with the Young Democrats of Virginia, the focus was on
18 getting young folks registered early and excited about
19 campaigns as well. The idea is that the earlier you get
20 someone sort of engaged with the Democrat Party, and
21 making a habit of voting, the more likely that they'll
22 just continually do it. And so that's important to long
23 term stability and growth of the party.

24 Q Delegate Lopez, I'd like to focus particularly on the
25 work that you've done in your district with your voters.

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1 In the course of conducting, you know, registration and
2 get-out-the-vote activities you talked about earlier, have
3 you encountered any challenges to getting voters in your
4 district out to vote?

5 A Yes. We have, like I said, you know, folks from all
6 around the world. A considerable number of immigrants and
7 new Americans. And so you find there are transportation
8 issues, language barriers, cultural barriers,
9 socioeconomic barriers. And it becomes -- and it's just
10 basically time issues for folks to come out to vote. And
11 we find that a large number of votes in my community,
12 especially, are working -- especially new Americans and a
13 lot of Latinos in my district, they're working two, three,
14 even four jobs just trying to keep food on the table and
15 pay their rent or their mortgage and keep their kids in
16 school.

17 And so the idea of spending, you know, the amount of
18 time it takes to get from Point A to Point B in Arlington
19 County sometimes using public transportation, and so to
20 vote in some cases when it might take up to two, three,
21 even four hours, like it did in 2012 and 2008 in
22 Arlington, it can be a huge impact on someone's time and
23 their job. And it's hard to do on a random Tuesday.

24 Q Can you just describe in a little bit more detail the
25 language barriers that you mentioned or language

1 challenges?

2 A If -- even if someone is a naturalized citizen, if
3 they speak halting English, their ability to sort of
4 navigate election day, especially if it's a presidential
5 election year, and there's a large number of people in
6 line and they're trying to move quickly, it can be very
7 difficult if they're not familiar with the process.

8 And so, you know, even for -- this is also very true
9 for elderly folks who might be naturalized. But still,
10 it's hard for them to navigate the voting process.

11 Q And have you done any work on your own to help your
12 voters overcome that barrier?

13 A Yeah. In 2002 and 2003, I worked with the Arlington
14 County Democratic Committee and the State Board of
15 Elections to create a pilot program for Arlington so that
16 we could have signage in both English and Spanish.

17 Q And why were you having signage in both English and
18 Spanish?

19 A Anything we could do to help folks navigate the
20 process and navigate the system and make the polls move
21 faster.

22 Q And have you encountered any voters in your district
23 who had cultural challenges?

24 A Yes. Especially my voters who are Latino. I have a
25 large segment of my district that are from El Salvador or

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1 Honduras or Guatemala that where culturally they've had
2 issues with being involved in the government, it's
3 dangerous. Being involved in the electoral process,
4 that's a dangerous proposition. And even though they
5 might be naturalized, even though they might, you know,
6 understand, and do understand, the differences between the
7 way we do voting and other folks, and the way maybe where
8 they came from, there's still always that trepidation.
9 They're wary of the process, especially with older folks,
10 I find.

11 Q And I believe you touched upon this, but could you
12 just describe some of the transportation challenges that
13 you mentioned?

14 A A lot of folks in my district -- I mean, Columbia
15 Pike is the spine of my district. And it is the most
16 heavily used transit corridor in all the Commonwealth of
17 Virginia. A huge proportion of my voters and my
18 constituents use buses and public transportation. And
19 getting from -- during rush hour, or any part of the day,
20 really, from Columbia Pike to the DMV, or getting from
21 Columbia Pike to the courthouse area where the electoral
22 office is, is at least a half hour. And so that's an hour
23 back and forth. And then that's not included in the time
24 it might take to it get an ID or to go through the process
25 at the electoral office. And so you're talking about a

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1 huge amount of time sometimes for folks who are just
2 trying to get from Point A to Point B in northern
3 Virginia.

4 Q And can you give any specific instances of voters
5 you've encountered who've had these problems or
6 challenges?

7 MR. HEARNE: Your Honor, if I may object. This
8 witness is testifying largely of hearsay. He's not been
9 offered as an expert, there's been no studies --

10 THE COURT: And I don't receive it as such. But
11 certainly it's a mere fact of utterance, and a constituent
12 has told him that. You can cross him as to the basis for
13 it. The objection is overruled.

14 You may respond.

15 A Yes. I have had constituents of mine who have
16 contacted me. One individual contacted my office who I've
17 known for -- who said that she's a cleaning lady. And
18 it's been very hard for her to get from job to job to job,
19 and then also bring her supplies and then be able to get
20 from Columbia Pike to the DMV and back again because what
21 happens is that hurts her -- the amount of time she has
22 for --

23 THE COURT: Well, I'm going to sustain the objection
24 at this point. He can recite what someone told him
25 concerning the inconvenience, but he can't add the details

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1 and any kind of his own impression.

2 No impressionistic evidence, Delegate. Just exactly
3 what they told you. That's all.

4 You may continue.

5 MS. CALLAIS: Okay. I think we can move on.

6 THE COURT: Okay. Fine. Go right ahead.

7 BY MS. CALLAIS:

8 Q Delegate Lopez, have you also encountered any voters
9 who have had difficulties understanding the electoral
10 process?

11 A With naturalized citizens, sometimes. Yes. What
12 happens is they're confused. I've actually had a couple
13 folks call me saying that they had been able to use their
14 utility bill in years past, but then they weren't able to
15 use it the next time they voted. And, actually, I get
16 phone calls -- an equal number of folks will call me from
17 outside my district who are simply Latinos as will call me
18 from my district. And so -- and it's happened a couple
19 times where folks have asked about why am I not allowed to
20 vote this year. What happened? What happened with my
21 voting? Why couldn't I go through the process?

22 And so what I'm finding is that what we were talking
23 about when this bill was before the House of Delegates
24 is -- and the concerns we had, are coming to pass. People
25 are confused about the process.

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1 MR. HEARNE: Your Honor, again, I object not to him
2 recounting specific statements, phone calls, even concerns
3 generally that his constituents have expressed to him, but
4 testifying that the individuals are confused as to the
5 state of mind of people who aren't in court, what affect
6 it's having on them. He's not an expert, and there has
7 been no studies.

8 THE COURT: I agree with your objection, but I think
9 it's harmless under the circumstance, so we'll just go
10 ahead and move on.

11 BY MS. CALLAIS:

12 Q So, Delegate Lopez, is it your understanding that in
13 2013, Virginia passed a photo ID law?

14 A Yes.

15 Q And did you support that law?

16 A No. I was very opposed to it.

17 Q Why were you opposed to that law?

18 A Well, it was my impression that -- and from the facts
19 that I had before me at the time, that there were
20 significant unintended consequences for new American
21 populations and minority populations, and people living on
22 the margins of society, and for poorer populations because
23 it would make it much harder for them to be able to vote.

24 Q Why did you believe it would make it much harder for
25 them to be able to vote?

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1 A Well, going back to what I said before about the
2 impact on just the confusion aspect, and then also the
3 fact that for some people it would be harder because of
4 the time it would take or the -- to go and get a new ID,
5 for the education aspect of it. And what happened after
6 the fact is that we actually -- I actually spoke at a
7 couple of forums where we were trying to explain to the
8 community, between community groups and working with
9 outside organizations, to explain, you know, here's what
10 the new law is. Here's what you need to do to comply with
11 the new law. And then also talking about how we got from
12 Point A to Point B during the General Assembly session.
13 So I worked with VACOLAO and, you know, Virginia New
14 Majority, and speaking at different events.

15 Q Can you please explain to the Court what VACOLAO is?

16 A I'm sorry. It's the Virginia Coalition of Latino
17 Organizations.

18 Q And these forums that you spoke at, and where you
19 worked with voters, were they focused on any particular
20 population groups?

21 A More often than not we were dealing with the Latino
22 population.

23 Q And why were you working with the Latino population?

24 A Because more often than not, in my community you have
25 people in the Latino community who were actually

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1 expressing concerns about it. And the organizations that
2 were organizing it, were organizing around, in large part,
3 the Latino community, VACOLAO, but also Virginia New
4 Majority, even though they represent almost all new
5 Americans and -- or try to work with all new Americans.
6 The Latino community was the one that was really out in
7 force.

8 Q And you mentioned that you were opposed to the law
9 because of the number of barriers. Were those the same
10 challenges you discussed before that you had seen when you
11 worked with your constituency?

12 A Yes.

13 Q Delegate Lopez, how long have you lived in Virginia?

14 A Since 1974.

15 Q So, is it safe to say, you grew up here?

16 A Yes. I was born in Pennsylvania, but I got here as
17 quick as I could.

18 Q And I understand that was by way of many different
19 cities?

20 A And countries, yes.

21 Q So throughout your time growing up and living in
22 Virginia, have you personally experienced any
23 discrimination on account of being a Latino?

24 A I have a unique situation. To the typical person, I
25 look white. I have the face of my mom, but the nose of my

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1 father. And what that means is I have a Lopez nose, but I
2 have my mom's skin complexion. She's from Pennsylvania.

3 And the idea is that what I have experienced is
4 instances where individuals will assume that I can't be
5 Alfonso Lopez, and they'll say something about Latinos in
6 front of me. Or I remember a couple of instances where I
7 was at a health clinic, and it was said to me -- I was
8 very sick. I had mononucleosis. And it was said, "*It was*
9 *just like a Hispanic to be late.*" And so that kind of
10 thing is what I see.

11 Where I really have seen, and I felt it more acutely,
12 is through my father. My father is what one would
13 consider a more stereotypical Latino looking man. He has
14 black hair, very dark complexion. He has Indio features.
15 He's from Venezuela.

16 And he has suffered sort of the --

17 MR. HEARNE: Your Honor, in terms of testifying as to
18 what some individual that is not in court --

19 THE COURT: I'm going to have to sustain that
20 objection. He's obviously testifying about what his
21 father told him about his father's experiences. The
22 objection is sustained. If you can approach it
23 differently without hearsay evidence, that would be fine.

24 MS. CALLAIS: Okay.

25 BY MS. CALLAIS:

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1 Q Delegate Lopez, have you ever been with your father
2 and witnessed discrimination that he has faced?

3 A Yes.

4 Q Can you describe that for the Court, what you
5 witnessed.

6 A In -- when I was a teenager, my dad -- we were in a
7 snow storm, and our car broke down. And my dad was being
8 told by the mechanic, or the owner of garage, that he
9 should go back to where he came from. And that has -- and
10 my father has -- I've also been in the car with my dad on
11 a couple of occasions where he was driving and his car was
12 stopped. And I was in the back of the car. And to this
13 day, I still don't know why he was stopped. But that
14 happened on more than one occasion when I was growing up.

15 Q And have you experienced, over the course of your
16 life here in Virginia, changes and attitudes towards
17 Latinos?

18 A Yes.

19 Q Can you describe those?

20 A It's not the way it has been in the past. In the
21 '50s and '60s and '70s, you would see much more soft
22 racism. And there was -- like referring to all Latino
23 men, no matter how old they were, not by Mr. or Sir, but
24 by calling the person Pablo. You don't see that -- or I
25 don't see that anymore.

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1 But just yesterday my dad was at BJ's big lot store
2 up in northern Virginia.

3 THE COURT: Were you with him?

4 DELEGATE LOPEZ: I was not. But he called me about
5 it.

6 THE COURT: Objection sustained.

7 DELEGATE LOPEZ: He called me about it immediately.

8 THE COURT: Objection sustained.

9 BY MS. CALLAIS:

10 Q As to attitudes, you were saying?

11 A It has gotten better, but I have seen increased
12 evidence recently, especially over the last four or five
13 years, for instance, regarding racial profiling with laws
14 in different counties, like Prince William County, the
15 legislation in 2012 about stop and frisk that was geared
16 toward the Latino populations.

17 You see that there is -- there are attacks. And just
18 in the rhetoric you see nowadays in the political realm of
19 it's okay to refer to entire communities, especially
20 Latino communities, as rapists or thieves. And you find
21 that infecting other aspects of political discourse, as
22 well as personal discourse.

23 MS. CALLAIS: No further questions, Your Honor.

24 THE COURT: All right.

25 Cross-examination of Delegate Lopez.

CROSS-EXAMINATION OF DELEGATE LOPEZ

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MR. HEARNE: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. HEARNE:

Q Delegate Lopez, I'm Thor Hearne. And I'm representing the Commonwealth and the defendants in this case. I appreciate you coming today to testify, and I will be as brief as I can in the cross-examination.

You testified, as I understood, that you're from the Forty-Ninth District?

A Yes.

Q And you have been for five terms?

A No, three terms.

Q Five elections?

A Four elections.

Q Then I got my numbers wrong. What would you estimate to be -- and your testimony, as I heard it, was that the district was made up of mixed different ethnic groups, is that correct?

A It's literally the world in a zip code.

Q And what percentage of that, that would be your district, would you say is Latino?

A Around 23%, 24%.

Q And yet in that district, they've elected you as an identified Latino or Hispanic, is that correct?

A Yes.

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1 Q I mean, in other words, even though you describe
2 yourself as not perhaps as outwardly appearing as much of
3 a Latino as you describe others have --

4 A Well, whenever someone asked me that and they say,
5 "You're not a real Latino", I say, well, "What's a real
6 Latino?"

7 And I describe blond-haired, blue-eyed Argentineans,
8 and I describe folks -- well, I just try to -- it's a very
9 narrow idea about what a real Latino is.

10 Q And I guess my question may be a little more narrow
11 than that. Just going to your testimony, it seems to me
12 you identify yourself to your constituents as a Latino, is
13 that how you would characterize yourself?

14 A I identify myself as a Latino and also as a Democrat,
15 and as a longtime servant of the community.

16 Q And given the ethnic percentage of your district
17 roughly, if I understood your testimony, 30% or so?

18 A It's 23%, 24%.

19 Q And yet despite your ethnicity, you've been elected
20 to be their delegate?

21 THE COURT: He testified that he had.

22 MR. HEARNE: Yes, sir.

23 BY MR. HEARNE:

24 Q Delegate Lopez, did you support the -- and let me
25 clarify because we've developed a vernacular in this case

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1 of two different voter identification requirement laws in
2 Virginia, what we're referring to as the 2012 law and the
3 2013 law. Are you familiar with that?

4 A Could you clarify the differences as that's known
5 here in the court?

6 Q Certainly. The law in 2012, and I will summarize the
7 critical difference, or one of the critical differences
8 that we've discussed, is the provision in the 2012 law for
9 a voter registration card which does not have a photo on
10 it that is mailed by the election officials to voters, and
11 is sufficient for identification. Does that refresh your
12 recollection of the difference?

13 A I believe so.

14 Q Okay. And you opposed the 2013 law, your testimony
15 was, "*vigorously*," is that correct?

16 A Yes. I spoke against it.

17 Q And why was it that you spoke against it?

18 A For any number of reasons I thought that making -- a
19 photo ID was actually a backdoor way of depressing overall
20 voter turnout, and making it harder for people to vote.

21 Q And did you oppose the 2012 law?

22 A I believe I did. I don't recall. I take hundreds of
23 votes, in some cases, everyday.

24 Q But in the context of opposing the 2013 law, which
25 was a change to the 2012 law, did you have occasion to say

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1 whether or not you opposed or favored the existing law?

2 A I don't recall.

3 Q And I stated -- or you stated, and I heard your
4 testimony earlier, you said you felt that the 2013 law had
5 some unintended consequences, is that correct?

6 A Right.

7 Q What were those that you identified?

8 A It would make it harder for folks who were poorer who
9 have numerous jobs. Might have -- a halting English to
10 truly avail themselves and make it easier for folks to
11 vote as opposed to making it harder for folks to vote.

12 Q In terms of other similar legislation that requires
13 identification, have you had occasion to support
14 legislation requiring identification, photo
15 identification, in the context of purchasing firearms?

16 A You would have to give me the example.

17 Q I'm going to ask you --

18 A I would definitely want -- I have been an active
19 proponent of more sensible gun violence protection
20 measures in the Commonwealth.

21 Q Would it recall your recollection if there was a
22 measure that required some photo identification to
23 transfer firearms, or certain magazines for firearms?

24 THE COURT: Now, I don't think he's asking the
25 question hypothetically. He's asking you if you have

CROSS-EXAMINATION OF DELEGATE LOPEZ

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1 voted for that genre of legislation.

2 DELEGATE LOPEZ: I'd like to know the specific bills.

3 THE COURT: Do you ever recall a bill that you have
4 voted for or against that has required photographic
5 identification for the purchase or trafficking in
6 firearms, Delegate?

7 I don't mean to preempt your question. I'm trying to
8 get to the core here.

9 DELEGATE LOPEZ: Actually, I'd love to know the
10 specific bill. But I couldn't give you an answer about a
11 direct piece of legislation.

12 THE COURT: Okay. Fair answer.

13 BY MR. HEARNE:

14 Q Have you sponsored a bill called House Bill 97?

15 A Could you tell me which year?

16 Q It would have been, I think, within the last two
17 years. It had to do with driver's licenses being issued
18 to non-citizens.

19 A Yes, I did that this year. It was specifically for a
20 very small portion of population that is dealing with
21 folks who are in a weird doughnut hole. They have -- they
22 are under the torture -- the federal torture statutes.
23 And if they are -- because they're in the process of
24 getting a temporary protective status, and if they go back
25 to their nation of origin, they will be tortured or

1 killed. And they've been deemed as such by the federal
2 government.

3 But we do not allow them to get a driver's license.
4 They might be able to work here, but we haven't given them
5 a driver's license. I was trying to fix that loophole in
6 the law. And that's what my bill did.

7 Q Would those individuals subject to that bill be
8 individuals who are eligible to vote otherwise as citizens
9 of Virginia and the United States?

10 A No. They could avail themselves of the
11 naturalization process. But they were in the process --
12 we're saying if you have a temporary protective status in
13 the United States, you should be allowed to have -- and
14 you're allowed to work here, and you might be given, you
15 know, some identification, some ID, and green card status,
16 you should at least be allowed to get a driver's license.

17 Q Has your bill passed?

18 A No. It was -- all of those bills that were put
19 forward in that area, I think all four of them were set
20 aside for a study over the course of the summer.

21 Q If your bill were to pass, would that allow or
22 authorize the State of Virginia issuing a driver's license
23 to an individual who is not a citizen of Virginia, or a
24 citizen of the United States?

25 A Yes. But these are, like I said, individuals who are

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1 covered by the federal torture statutes, and would be
2 allowed to be in the United States through a fairly
3 rigorous process.

4 Q You've talked about your work with voter
5 registration, voter turnout, correct?

6 A Yes.

7 Q And you've talked in that context about you refer to
8 the young Democrats or young voters. Do you recall that
9 testimony?

10 A Yes.

11 Q What is a young voter, in your mind?

12 A Anyone between the ages of 18 and 35.

13 Q Why do you use that age range of 18 to 35?

14 A That's how we define young Democrats in the
15 Democratic Party of Virginia.

16 Q And is there some source for that, or is there some
17 resolution? Where would I go to find that information?

18 A The bylaws of the Virginia Young Democrats bylaws.
19 And I don't know why that's designated as that grouping.

20 Q I mean, as opposed to 18 to say 21, or 18 to 30?

21 A I can't give you a reason as to why.

22 Q Are you familiar with the federal Help America Vote
23 Act?

24 A Very tangentially.

25 Q Okay. In the context of your voter registration, and

CROSS-EXAMINATION OF DELEGATE LOPEZ

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1 as I understand you were active in get-out-the-vote
2 efforts, do you work with voter registration drives?

3 A Yes.

4 Q And are you familiar with the requirements of voters
5 who are newly registered under the federal Help America
6 Vote Act?

7 A No.

8 Q After the 2013 law was passed, again, over your
9 objection, have you had occasion to work with your
10 constituents, to work with the Virginia election officials
11 to try and make it easier for people to obtain ID who may
12 not have any?

13 A What I've been trying to do is explain the process,
14 the new process to folks, the new rules, and address any
15 confusion that might be out there about what is -- what
16 ID, and what proof of ID, is allowed to be taken and used
17 at the polls. And so I'm trying to explain to folks how
18 we got to this point, and then also explain to folks what
19 they can do as they try to vote to make their vote count.

20 Q Have you reached out to, say, for example, Mr. Cortes
21 with the Election Board, or others in the election
22 community, to specifically aid your constituents to obtain
23 free ID?

24 A No.

25 MR. HEARNE: I have no further questions.

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1 THE COURT: Any redirect?

2 MS. CALLAIS: No, Your Honor.

3 THE COURT: May the Delegate be excused?

4 MS. CALLAIS: Yes, Your Honor.

5 MR. HEARNE: Yes, sir.

6 THE COURT: Delegate Lopez, you're excused and free
7 to go. Thank you, sir, for taking your valuable time to
8 come in and testify.

9 DELEGATE LOPEZ: Thank you.

10 **WITNESS STOOD ASIDE**

11 THE COURT: Dr. Smith, if you would come back up,
12 sir.

13 Actually, before Dr. Smith testifies, I think we'll
14 take about a 5-minute recess. Make it 10. A 10-minute
15 recess.

16 (Recess taken.)

17 (Gil Halasz is now the court reporter.

18 **DIRECT EXAMINATION (Continued)**

19 THE COURT: We will continue with the direct
20 examination of Dr. Smith.

21 BY MS BRANCH:

22 Q Welcome back, Dr. Smith.

23 When we stopped before, we were just finishing up
24 talking about on-going facts of the history of
25 discrimination in Virginia.

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1 Did you have anything else you wanted to add to that?

2 A Well, the only thing I think I would add is that in
3 referring to the more recent period, I would make a
4 comment and observation similar to what I noted with
5 regard to the late 19th century or early 20th century,
6 which is that there is no straight line in one direction
7 toward, you know, racial equality or racial progress. It
8 comes and goes in fits and starts. Even since, you know,
9 since the end of the official Jim Crow era in the 1960's,
10 I think that has still certainly been the case that while
11 things are certainly far better than they were half a
12 century ago, it hasn't been a straight line. It is up and
13 down, back and forth.

14 There is constant obstacles and barriers that have
15 been thrown in the way and litigated in many cases. So
16 it's, I mean -- I will add that.

17 Q Let me turn your attention now to the end of the
18 1960's, beginning of the 1970's. Can you describe the
19 political climate in Virginia at that time?

20 A Sure. I think certainly any political historian
21 would see the late '60's and early '70's as one of the
22 more tumultuous and uncertain periods in Virginia history,
23 if you will. And that is primarily the result of the fact
24 that because of the end of the Jim Crow era and for the
25 fracturing of the old Democratic machine. And it's not

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1 going to happen overnight, it didn't happen in one day, in
2 one year. It took -- you know, the transition took a
3 number of years.

4 For instance, I think the 1969-1973 gubernatorial
5 elections really highlight this transition, highlight the
6 possibility that existed, and the reality of sort of what
7 came out of that.

8 In the 1969 elections, Linwood Holton, who had been a
9 long-time sort of the head of the Republican party, if you
10 will, actually won. He was elected, first Republican
11 elected Governor of Virginia since the reconstruction era.
12 And his coalition that he put together was actually quite
13 remarkable.

14 On the other side, the Democrats were completely
15 fractured. You had sort of the old-line Byrd element of
16 the Byrd machine through folks who still wanted to, wish
17 we had held on, wished the Commonwealth had held on, to
18 segregation. You had a more moderate liberal faction of
19 the party that was moving in step with the national
20 Democratic party which had the support of the Civil Rights
21 Act, support of the Voting Rights Act.

22 And then you had a third group actually of either
23 more liberal Democrats, mostly -- many of them union
24 voters who supported Henry Howell, who was a civil rights
25 and labor attorney from Norfolk. Actually had a three-way

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1 split among Democrats in the primary.

2 Henry Howell, who was the most liberal of the
3 candidates; and Bill Battle, who was more moderate of the
4 two, emerged. The third candidate, who was the more
5 conservative one, the old Byrd member, Byrd machine
6 member, lost in the primary. So you actually had a
7 run-off in which you had sort of a centrist moderate and a
8 very liberal Democrat, and the old, you know, what was
9 left of the Byrd machine was adamant that Henry Howell,
10 liberal, would not win. And so they threw their support
11 behind the more moderate candidate.

12 In the general election, you had a very interesting
13 set of occurrences. Linwood Holton had the support of the
14 Republican people that had been voting Republican for a
15 long time. And he, like most of his party, that was sort
16 of based in the southwest part of the state, but you also
17 simultaneously had old-line -- some old-line Byrd
18 Democrats who were afraid that Bill Battle was actually
19 more liberal than he had let on. So they supported, and
20 had been actually voting for a Republican in presidential
21 politics since the '40's. They supported the Holton
22 coalition.

23 And then you had some liberal Democrats who actually
24 saw Holton as more racially liberal than the Democratic
25 candidate. And he probably was.

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1 So Linwood Holton had this remarkable coalition. He
2 got 37 percent of the black vote, large segment of the
3 labor vote, and as I said, both liberal and very
4 conservative voters. And he won in 1969.

5 What followed, though, was equally interesting, which
6 is that, by the time Linwood Holton left office in, I
7 guess January of 1974, he had really lost control of the
8 party. He had lost control of the leadership of the party
9 to Richard Obenshain, a lawyer here in Richmond, who by
10 all accounts is described as a brilliant political
11 strategist. And where Holton had been determined that the
12 Republican party, which had fought so hard for so long as
13 an alternative to the Byrd machine, Holton insisted that
14 the Republican party not bring old-line Byrd Democrats in
15 to the Republican party and build the party that way.

16 Obenshain saw a different political reality, and I guess
17 also proved right, so he put together really a coalition
18 again drawing in the old-line Byrd Democrats. And then
19 also largely increasing the numbers of new voters moving
20 to Virginia who might be described as suburban voters who
21 were concerned about issues like busing, for instance.

22 So, by 1973, the 1973 gubernatorial election, the
23 Democrats are still remarkably fractured. Ended up not
24 putting up a candidate. Henry Howell decided to run as an
25 independent. And the Republicans actually prevailed upon

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1 Mills Godwin, who was the very last of the Byrd
2 governors -- he had been governor in the late '60's. He
3 had been prior to that a southside senator, and was one of
4 the real architects of massive resistance.

5 So in 1973, he comes out of retirement and runs as a
6 Republican and defeats Henry Howell in a very narrow,
7 very, very fiercely-contested election.

8 But I think the symbolism is there. Holden got, I
9 think, 37 percent of the black vote in 1969. Godwin only
10 six percent of the black vote in 1973. And that really is
11 a reflection of the very deliberate turn the Republican
12 party took in the early '70's in terms of membership, in
13 terms of who it was going to appeal to.

14 And that level of racial polarization has, for the
15 most part, remained to this day in that Republican
16 candidates for state-wide office generally receive a very
17 small percentage of the vote.

18 John Warner would be the one exception, who was more
19 moderate. He also ran unopposed several times and got a
20 larger percentage of the black vote.

21 For the most part, no Republican candidate for
22 governor in a state-wide office, to my knowledge, received
23 more than 15 or 16 percent of the black vote since '69.

24 Q And that change that you described that occurred in
25 the Republican party, what are some of the -- or how would

1 you describe that change?

2 A Well, as I say, I think the main thing was, whereas,
3 you know, up until the late 1960's, the Republican party
4 was fairly small in Virginia. It never competed
5 successfully in state-wide elections. It was a minority
6 party. But it was the -- it was the alternative to the
7 Byrd machine. So in matters of race, it was the
8 Republican party that was always more moderate. That was
9 something that Holton himself, you know, desperately
10 wanted to hold on to, is that commitment to racial
11 equality. And Holton himself while governor, you know,
12 the biggest issue while he was governor was busing. And
13 so it is during -- during the first year of his
14 administration where Judge Merhige - who I see, his
15 portrait is right there - issued the orders in the
16 Richmond school desegregation.

17 Holton responded by escorting his children to public
18 schools in Richmond. And his kids were the only white
19 kids in the otherwise all-black schools. Other whites
20 wouldn't go along.

21 So symbolically I think it is sort of a remarkable
22 moment of statesmanship in the state of Virginia. In
23 fact, one that Colgate Darden, former governor, referred
24 to it was the greatest act of, I think, leadership or
25 statesmanship he had ever seen in his lifetime when

1 Linwood Holton escorted his children into the black
2 schools.

3 But that was a battle Holton lost ultimately in terms
4 of busing for all sorts of reasons as a hot button issue.
5 No one -- you know, people never objected to busing when
6 it is about bringing rural kids into schools in town, or
7 vice versa. Busing became an issue when it involved
8 racial integration in the schools.

9 That became, you know, along with, you know,
10 residential segregation, educational segregation, came to
11 sort of define Virginia, like many other states and in new
12 ways. So, you see real development in the 1970's.
13 Otherwise, mostly color-blind, neutral politics, but one
14 that is really committed towards residential segregation
15 and school segregation.

16 Q You mentioned earlier the passage of the Voting
17 Rights Act of 1965. What affect did that have on the
18 ability of African-Americans to participate in politics in
19 Virginia?

20 A Well, it certainly is a seminal event and seminal
21 moment. You know, Virginia was one of the six states
22 covered in its entirety from inception from '65 until all
23 of Virginia was a covered jurisdiction. And, you know,
24 there were certainly, but not just the Voting Rights Act,
25 but the abolishment of the poll tax, allowed more

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1 African-Americans into the political process.

2 Protected and enforced the law, from -- you know, in
3 the '80's and '90's alone, there is something like 18 or
4 20 Department of Justice objections based on Section V.
5 So the point being, that, again, it is not a smooth -- not
6 a smooth ride. You know, the Voting Rights Act passed,
7 everything is great. You continue to have localities and
8 counties resist through the use of multi-member districts,
9 municipal annexation, at large districts.

10 And time and again by the early 1980's, you have the
11 City of Petersburg with 60 percent African-Americans and
12 still city council controlled by whites because of, you
13 know, racial jerrymandering.

14 That eventually changes. But if it had not been for
15 the presence of the Voting Rights Act, and continued
16 efforts by the Department of Justice to enforce that, I
17 think you would -- change would have come even much slower
18 and taken a lot more longer. And who knows where we would
19 be today.

20 Q Has the Voting Rights Act been renewed since it
21 originally passed?

22 A Yes. There were renewals 1970, '75, '82 and then
23 2006 was the last one.

24 Q Had Virginia politicians supported the renewal of the
25 Voting Rights Act?

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1 A At the outset, no. Certainly, the original passage
2 in '65 and reauthorization in '70 and '75. The vast
3 majority of Virginia representatives were opposed.
4 Remember, in 1965 there was almost mostly Democrats.
5 There were a few Republicans in Congress, but mostly
6 Democrats. And there were one or two, I think two,
7 members of Congress in 1970 and '75 who voted to
8 reauthorize it.

9 More recently, in 2006, as we discussed, you know,
10 especially in the depositions, the reauthorization at the
11 end turned out to be nearly unanimous. I think there were
12 a couple dozen, I think three dozen, representatives,
13 members of the House of Representatives, who opposed it.
14 None from Virginia that I am aware of.

15 So there was by 2006 a general consensus that the
16 Voting Rights Act was something that was worth protecting.
17 And the Republican president, of course, signed it.

18 Q Did the passage of the Voting Rights Act have any
19 black politicians who had been elected to state-wide
20 office in Virginia?

21 A Only Doug Wilder, who in 1969, he was the first
22 African-American elected to the state Senate.

23 And then in 1985 when he was elected Lieutenant
24 Governor, and then he was the first person elected to
25 state-wide office. And then four years later in '89 when

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1 he was elected governor, he became the first -- the first
2 elected African-American governor in the United states.

3 Q Can you describe for the Court Doug Wilder's campaign
4 for governor and his rise in politics?

5 A Sure.

6 To back up a little bit, I think it is important to
7 recognize that Doug Wilder was, you know, he had been in
8 the state Senate since 1969. By the early 1980's he, like
9 many other African-Americans, felt the Democrat party was
10 taking, you know, black votes for granted. But he also
11 recognized that Democratic candidates did not win
12 state-wide without black support by the 1980's. So he
13 sort of -- he threatened at one point in the early 1980's
14 to run as an independent in I think it was the U.S. Senate
15 race. That got the attention of the Democratic leaders.
16 And so he was then supported in the 1985 campaign for
17 Lieutenant Governor. Which he did win.

18 For the most part, his opponent actually controlled
19 until the end of the campaign. Race, more or less, was
20 kept out of it in terms of -- in the closing weeks of the
21 campaign, race was made much more of an issue in the
22 campaign. Wilder did win by a much narrower margin than
23 his ticket mate, Chuck Robb, who won the governorship.
24 But he was elected Lieutenant Governor, and then became
25 the Democratic candidate for governor in 1989 when, again,

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1 he, you know, won with overwhelming support among black
2 voters. Got enough of the white vote just barely to win
3 the election.

4 Q During Doug Wilder's campaign for governor, were
5 there any racial appeals?

6 A There were. I think, you know, not surprisingly, but
7 yes, there were certainly -- there were certainly ads.
8 Wilder himself did his best to try to not make race an
9 issue, because he wanted to appeal to a broader swath of
10 the population. But certainly during the campaign there
11 were references to his race and to the fact that he was
12 African-American. And one of the statistics often cited
13 is that he led by, I think, ten or 12 points in the polls
14 right down to the very end. And then the margin of
15 victory was only six or seven thousand votes.

16 And most observers noted, you know, have referred to
17 that as a reflection that individuals being polled are
18 reluctant to admit there might be racial bias in their
19 votes, so were reluctant to say they would not vote for
20 him. But --

21 Q So since Doug Wilder's election in '89, has Virginia
22 elected an African-American to office?

23 A Well, certainly it is not to, you know -- you know
24 state-wide governor, U.S. Senator, in the legislature, I
25 mean, I think now there are 13 representatives, 13

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1 delegates, which is the most there have ever been. Well
2 into the 1980's, there was only four African-American
3 delegates, but the number is now 13 out of a hundred. In
4 the state Senate, beginning with Wilder in '69, there is
5 first this one black senator and now for a while there
6 have been five. Five out of 40. Up 12 and a half
7 percent. So, certainly there has been progress. So
8 African-Americans still trail.

9 If you are looking straight in terms of population
10 numbers, they certainly trail, their percentage of
11 population, if that makes sense.

12 The one area in terms of important state offices
13 where African-American is equitably represented, or
14 perhaps now even more, slightly over-represented are on
15 the state Supreme Court. There are seven justices there.
16 And as I discussed in my reply report -- in my initial
17 report, I erroneously stated there have never been more
18 than one black member of the Virginia Supreme Court, which
19 had been the case up to the 1980's and '90's. But for the
20 last several years, there had actually been two members.
21 So two out of seven members of the Supreme Court are
22 currently African-American.

23 Q You described earlier racial appeals employed during
24 the Doug Wilder campaign for governor. Have there been
25 other instances of use of appeals to race in politics

1 since then in Virginia?

2 A Well, I think certainly things have changed over
3 time. The sort of overt appeals, overt racial appeals
4 that were quite common back in the earlier part of the
5 century up through the Jim Crow era, and even kind of, you
6 know, the kind Doug Wilder faced, are no longer, you know,
7 considered, you know, politically smart. But on occasion,
8 there have certainly been perhaps unexpected outbursts,
9 might be a way to say it.

10 And most famously, of course, Governor -- former
11 Governor and Senator, George Allen in 2006 during his
12 re-election campaign when he sort of spur-of-the-moment
13 referred to a member, a person of south Asian descent as
14 "macaca," which he was widely pilloried for. But that was
15 2006, only ten years ago. So you have someone as
16 prominent as George Allen who still felt comfortable
17 enough using a racial epithet in a state-wide election for
18 Senate.

19 Q Have there been other instances of racial appeals in
20 Virginia as well in terms of --

21 THE COURT: What is the question?

22 MS BRANCH: Have there been any other instances of
23 racial appeals in politics in Virginia?

24 A Well, I think in terms of, I guess I would separate
25 them as a different category. So that sort of direct

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1 derogatory comment would be one. There was an incident a
2 couple of years ago where a member of the legislature
3 referred to somebody as "tar baby," which is an old Jim
4 Crow term.

5 I would say that there have been people arguing on
6 this in terms of the actual meaning of it, but beginning
7 with George Allen, and continuing to Governor McDonnell,
8 the last three Republican governors have all declared
9 April, you know, Confederate Heritage and History Month.

10 Depending on your point of view, some would point out
11 that this is about heritage. This is, you know,
12 Confederacy, like it or not, is part of heritage. Others
13 would argue -- and I would fall in this category -- that,
14 you know, you can't, you know, sort of declare a month as
15 an official -- declare as an official of the state that we
16 are essentially celebrating Confederacy. You can't do
17 that without recognizing that slavery was the
18 under-pinning of that. That has certainly been racially
19 divisive. Did it affect elections or not? I can't say
20 that.

21 Q Has race been involved in redistricting in Virginia?

22 A Well, certainly. I think, as in most states, and,
23 you know, most recently I know a case pending before the
24 U. U.S. Supreme Court now that involves 13 congressional
25 districts, I think -- so, certainly, I think,

1 redistricting is one. If you look at the Section V
2 objections the Department of Justice has made over the
3 last 20 or 30 years, many of those involved redistricting.

4 So, yes, there continues to be, and now even as we
5 speak now, there are cases that are pending that involve
6 racial jerrymandering claims.

7 Q One of the conclusions you come to in your report is
8 that the photo ID law at issue in this case is "But the
9 latest in a long line of attempts to suppress the vote of
10 African-Americans, a racial and ethnic minority." Why did
11 you come to that conclusion?

12 A Well, I tried to set it out. I think as a historian,
13 I am trying to think about change over time. And I see --
14 you know, while I do see a great deal of change, I also
15 see historical context in which these changes take place.
16 Sometimes changes are fast, and sometimes slow. Sometimes
17 there is movement forward, sometimes there is movement
18 backwards. And I think that the conclusion that I reach
19 is based on two factors. One is that there has been, that
20 I have seen, no credible evidence of actual voter fraud in
21 Virginia.

22 THE COURT: Objection sustained. I won't let him
23 offer his opinion as to whether or not there is any racial
24 discrimination enacting this. It is pure speculation on
25 his part.

1 MS BRANCH: Thank you, Your Honor.

2 THE COURT: And -- go ahead. I will leave it there.

3 MS BRANCH: Okay.

4 I will just note for the record that Dr. Smith
5 testified earlier about the frequency of voter fraud in
6 earlier eras. And as a historian, he is trained to look
7 at change over time. And I think he comes to the
8 conclusion in his report that voter fraud is no longer
9 present. But I understand, Your Honor, your ruling.

10 THE COURT: Go ahead.

11 BY MS BRANCH:

12 Q All right.

13 So not to weigh in on the ultimate conclusion about
14 legislative intent here, can you talk about the factors
15 that as a historian you would look at when you are
16 assessing whether or not the photo ID law was passed with
17 the intent to suppress the vote of African-Americans?

18 A In looking at the legislative history, to me the most
19 obvious point of comparisons, looking at what came just
20 before that, that is the 2012 law, which passed the
21 Department of Justice. You know, the Department of
22 Justice is, you know, the Department of Justice -- the
23 Department of Justice said this is okay. And that law
24 eliminated the sworn statement, which had been around for
25 a while, but also greatly expanded the number of types of

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1 photo IDs, or types of IDs. Wasn't just photo IDs. A
2 broad range of IDs that people could use. That bill
3 passed the Department of Justice scrutiny. In my report,
4 I make no claim that there is any problem with the 2012
5 bill.

6 But, the immediate, the very, very soon, nine month
7 passage of time was all that took place between the 2012
8 bill and the 2013 bill. So it has to be some credible
9 explanation for why the exact same group of legislators --

10 MR. FINBERG: I object.

11 THE COURT: Objection sustained. He is simply
12 speculating on the motives of the members of the General
13 Assembly based on his own personal views.

14 Objection is sustained.

15 MS BRANCH: Thank you, Your Honor.

16 BY MS BRANCH:

17 Q Dr. Smith, you note on Page 62 of the report -- this
18 is the last page of your report. And this is again
19 Plaintiffs' Exhibit 208.

20 "That contemporary Republicans in Virginia have
21 learned well the lessons taught by Carter Glass and the
22 Democratic party in the 20th century." Is it your
23 contention that nothing in Virginia changed in terms of
24 racial politics since the days of Carter Glass?

25 A Of course not. I never make that claim, and I was

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1 very clear in the reply report when it was suggested by
2 the rebuttal that I had made that claim. I was very clear
3 that I did not make that claim. An enormous amount has
4 changed. Lots of changes. But, there continues to be, as
5 I said, you know, efforts and barriers to full
6 African-American participation. They come up constantly.
7 There is -- requires constant effort, activism, litigation
8 to try to fully -- to have -- to fully realize the rights
9 of citizenship for African-Americans. That has been a
10 consistent theme throughout Virginia's, you know, history.

11 Q Is it your opinion, the legacy of official racial
12 discrimination in Virginia has persisted?

13 A Not officially. Again, the point raised in the
14 rebuttal report, and I tried to reply to that earlier,
15 that, no, I think that in terms of official, what you
16 might refer to as official disenfranchisement or official
17 discrimination, has to be seen to have kind of fallen
18 apart in the 1960's. There is no particular time or date.
19 It didn't end one day.

20 But over the course of the 1960's, and the
21 constant -- the series of forces from outside the state
22 that required the dismantling of the structures of Jim
23 Crow, that that official disenfranchisement has ended.
24 But, again, it doesn't mean that everyone was happy about
25 it or that beginning the next day everyone accepted it.

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1 And there have been, you know, repeated efforts over the
2 course of the last half century to slow down progress, to
3 minimize the ability of permanent African-Americans, and
4 now more recent time, other non-white voters, to
5 participate fully in the electoral process.

6 Q Is it your contention the photo ID law is one of
7 those such efforts?

8 A I have argued that in the absence of any --

9 MR. FINBERG: Objection.

10 THE COURT: Objection sustained. I am not going to
11 let you give me political speculation here. The answer is
12 "no." The answer is "no." You can't do that.

13 THE WITNESS: Okay.

14 THE COURT: Rephrase the question.

15 MS BRANCH: Actually, we can end there.

16 No further questions.

17 THE COURT: That is fine.

18 Cross examination of Dr. Smith?

19 MR. FINBERG: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. FINBERG:

22 Q Good afternoon. Good to see you again. Just to
23 remind you, I am Dana Finberg, one of the attorneys
24 representing the Commonwealth in this case.

25 A Right.

1 Q Dr. Smith, is it fair to say you spent your career
2 focusing on, and drawing attention to, race in the
3 American south and in Virginia in the 19th and early 20th
4 century?

5 A Well, I could qualify only to say, I think through
6 the middle half of 20th century. I am willing -- yes.
7 Beyond the early part of the 20th century certainly.

8 Q And you spoke about on direct the book that you
9 authored entitled "Managing White Supremacy."

10 Is that correct?

11 A Correct.

12 Q And the time period covered by your Managing White
13 Supremacy book ends in roughly 1960 with the end of the
14 Jim Crow period; isn't that right?

15 A Correct.

16 Q You haven't published any books on contemporary
17 Virginia political history, have you?

18 A Not from 1970 to the present. If that is what you
19 mean by contemporary, no.

20 Q Now, your expert report has been admitted into
21 evidence. The first two thirds of your report in this
22 case are verbatim, or paraphrase, of sections of your
23 "Managing White Supremacy" book; aren't they?

24 A Most of it is. We talked about it before. I would
25 add that that was written after years of exhaustive

1 research and not as an advocate in a court trial, but as a
2 neutral scholar. So it seemed only appropriate that, you
3 know, given there has been no scholarship I am aware of
4 since then that would counter, you know, my findings,
5 that that would be an appropriate use of that work.

6 Q When was that book published, sir?

7 A 2002.

8 Q In compiling your report in this case, you didn't
9 speak to any of the individual plaintiffs, did you?

10 A I did not.

11 Q You didn't speak to anybody at the Democratic Party
12 of Virginia?

13 A Did not.

14 Q And you did not speak with any individual voter who
15 has not been able to cast a vote for lack of a photo ID;
16 did you?

17 A I did not.

18 Q In compiling your report in this related to the
19 General Assembly's consideration of Senate Bill 1256, you
20 did not review any legislative documents in connection
21 with that, did you?

22 A No. I reviewed newspaper reports. But assuming I
23 understand what you mean by legislative documents, the
24 answer would be no.

25 Q Didn't review any video tapes of the legislative

1 debates?

2 A No.

3 Q You didn't review any audio recordings of the
4 legislative debates?

5 A No.

6 Q You didn't speak to any individual in the
7 legislature?

8 A Did not.

9 Q For example, Delegate Lopez, who is here today?

10 A I did not.

11 Q And you didn't review any of documents produced by
12 the defendants in this case?

13 A Correct. I did not.

14 Q Let me talk a bit about the conclusions that you
15 reached in your report. I am going to pick up where Ms.
16 Branch left off. That is, "That Republicans in 2013 have
17 learned well the lessons taught by Carter Glass in the
18 Democratic Party in the early twentieth century." That is
19 kind of how you summarize your report, isn't it?

20 A Yes.

21 Q To be clear, you are not saying that Republicans in
22 the Virginia legislature in 2013 are racist like Carter
23 Glass?

24 A No. I have been very clear that is not what I said.
25 That was not my intention. The point there is that in

1 1902, Carter Glass, and his contemporaries, understood
2 they could not legislate specifically on the basis of
3 race. So they said, based on characteristics. And that
4 is the comparison I was making, was the use of rather than
5 overt racial laws, using, targeting, passing laws or
6 legislation that would have the effect of suppressing the
7 vote of certain minorities.

8 Q You agree Virginia now has a professional
9 non-partisan election administration?

10 A Yes.

11 Q And it has had since at least the 1960s?

12 A I would assume so. Certainly late '60's, early
13 '70's, presumably, yes.

14 Q That is not a condition that existed back in the
15 Carter Glass era, is it?

16 A Well, I might ask you to restate the question. One
17 thing I would say, Virginia certainly, actually had a
18 reputation after the late 19th century throughout the 20th
19 century, had a reputation for a clean, fair, election. It
20 is just very few people were able to participate in them.

21 So I wouldn't want to assume for answering the
22 question, I am suggesting that the electoral machinery was
23 corrupt up until that time, because the one thing that
24 whatever you think of the Byrd machine is, they did,
25 apparently, ran clean, fair elections except for the fact

1 most people couldn't vote in them. Or many people.

2 Q To focus, you are not saying since the 1960's the
3 electoral administration in Virginia has been corrupt?

4 A Correct. I am not saying that.

5 Q Virginia's current elections administration doesn't
6 resemble the system under the Byrd machine in the early
7 20th century, does it?

8 A No, not in terms of the one-party domination. No.

9 Q You would agree, since the 1960's, Virginia elections
10 have been open, transparent, and that they have been
11 subject to public scrutiny?

12 A Yes.

13 Q Dr. Smith, would you agree it is important to
14 distinguish between racial polarization in voting versus
15 racial voter suppression?

16 A Between racial polarization and racial suppression?
17 Can you tell me exactly what you mean by that, or make
18 sure I understand your distinction?

19 Q Well, let me ask you this. You would agree with me
20 that racial polarization would describe the leanings -

21 A Yes.

22 Q - of particular ethnic or racial groups -

23 A Yes.

24 Q - in terms of their voting patterns?

25 A Yes.

1 Q That is different, isn't it, than racial voter
2 suppression?

3 A Yes.

4 Q Okay.

5 And as somebody who studied election laws in
6 Virginia, would you agree that the degree of polarized
7 voting in Virginia is roughly consistent with the degree
8 of polarized voting nationwide?

9 A I hesitate to be -- try to be precise on that. I
10 would think that that is roughly right. But I would, you
11 know, I would have to see some actual data to be certain
12 of that.

13 Q What was --

14 THE COURT: What was the question again that you
15 asked the Doctor? The last question.

16 MR. FINBERG: Your Honor, it was whether the degree
17 of polarized voting in Virginia is roughly consistent with
18 the degree of -

19 THE COURT: Thank you.

20 MR. FINBERG: - of polarized voting nationwide?

21 THE COURT: Thank you.

22 BY MR. FINBERG:

23 Q Are you aware white voters in Virginia were more
24 supportive of Obama in 2012 than they were of John Kerry,
25 white Democrat, in the 2004 election?

1 A Yes. That sounds right.

2 Q Does it sound roughly right that President Obama in
3 2012 got approximately 37 percent of the white vote in
4 Virginia?

5 A I take your word for that.

6 Q And Senator Kerry, he ran in 2004, only garnered 32
7 percent?

8 A Again, I will take your word without having those
9 figures in front of me.

10 Q You would agree with me that many factors other than
11 race play an important part in southern politics,
12 including politics in Virginia?

13 A Of course.

14 Q And you would agree with me, wouldn't you, Virginia
15 has changed in many profound and significant ways since
16 the 1950s?

17 A Yes. And I testified to many of those.

18 Q One of the ways that it has changed is, for instance,
19 Virginia's economy has developed from predominantly
20 agrarian, or farming, to a mix of industry and services?

21 A Certainly. Yes.

22 Q And the population of Virginia has grown dramatically
23 since the 1950's?

24 A Yes.

25 Q Since then, political power in Virginia shifted from

1 rural communities to the cities and suburban communities?

2 A That is fair.

3 Q Since the 1950's, overall public opinion in Virginia
4 has become more liberal rather than conservative?

5 A Again, I remember being asked this question at the
6 deposition. It is hard for me to, having grown up in
7 Virginia, think of Virginia as a liberal state. It has
8 grown -- has public opinion grown more liberal? In many
9 respects.

10 But certainly electorally, Virginia has remained very
11 conservative. Of course, didn't elect a Democratic or
12 liberal president between -- only once between 1948 and
13 2008. So again, I would be careful about characterizing
14 Virginia as a liberal state.

15 Q The question is more liberal than now than it was in
16 1950?

17 A By most reasonable measures. But I am not entirely
18 comfortable referring to Virginia as a liberal state.

19 Q Since the 1960s, politics in Virginia has changed in
20 profound and significant ways, hasn't it?

21 A Absolutely.

22 Q Since the 1960s, you would agree that modern southern
23 politics involved much more than obvious racial positions?

24 A Sure.

25 Q Economic class plays an important role in politics?

1 A Yes.

2 Q Gender plays a very important role in politics?

3 A Yes.

4 Q Religion?

5 A Yes.

6 Q Taxation plays a very important role in politics?

7 A Yes.

8 Q Opposition to unions?

9 A Sure.

10 Q Emphasis on individual liberties?

11 A Yes.

12 Q So-called family values?

13 A Um-hum.

14 THE COURT: You have to answer 'yes' or 'no.'

15 THE WITNESS: Yes. Yes.

16 BY MR. FINBERG:

17 Q Gun control?

18 A Yes.

19 Q National defense?

20 A Yes.

21 Q All these issues, you would agree, that the two major
22 political parties have clearly different views?

23 A Well, especially at the national level. I think
24 within state parties there is, but even within each party
25 you can pick any issue, and there are likely to be

1 differences of opinion among Democrats or Republicans.

2 But on, you know, from the high level, yes, there tend to
3 be profound differences to most of these issues.

4 Q You would agree with me that unlike the Carter Glass
5 era, or the era of the Byrd machine, that race as a
6 political issue no longer predominates in the political
7 discourse?

8 A Certainly not in the overt political discourse.

9 Q You would agree that voting rights for minorities
10 have evolved and are continuing to evolve?

11 A Yes. And they continue to evolve in fits and starts.
12 I think while you are absolutely correct in every one of
13 those issues you raised, it is an important issue. And
14 given a different -- depending on the election year,
15 depending on the candidates, those issues get different
16 priorities and different rankings. But, you know, again,
17 we talked about many times, sort of looking at Virginia's
18 history, including the post-1965 period, you know, race
19 and politics are so inextricably intertwined that I don't
20 know that you can simply discount and say things have
21 gotten better and race no longer is a factor. I think it
22 remains certainly a factor, and for many people one of the
23 most important, if not the most important.

24 Q You would agree that that official disenfranchisement
25 no longer exists in Virginia?

1 A Not in the way we have talked about previously, yes.

2 Q You would agree with me, wouldn't you, Dr. Smith,
3 most of your expert report submitted in this case deals
4 with efforts to suppress minority voting rights prior to
5 1965?

6 A About two-thirds of it does, yes. Correct.

7 Q Ms. Branch asked questions about the Voting Rights
8 Act. Not only its original enactment, but then subsequent
9 votes on reauthorization of the act. Do you recall that?

10 A Yes.

11 Q And would it be accurate that the position of
12 Virginia's representatives to Congress with regard to the
13 Voting Rights Act has swung from opposition in the 1960s
14 to bi-partisan support in 2006?

15 A In 2006, there was bi-partisan support both in
16 Virginia and in the nation for that. As I have tried to
17 indicate in, I think in my reply report, though, I think
18 that there are a number of factors that have to be
19 considered. And to simply suggest that means everybody is
20 on board, and fully supportive of, it is one thing to say
21 that accepting the knowledge that African-Americans are
22 going to vote, it is another thing to vote for the fairly
23 strict enforcement mechanisms of the Voting Rights Act.

24 Yet more recently, though, I think that the -- if you
25 want to look at a measure of support for the Voting Rights

1 Act and its enforcement, you have to look more recently at
2 the reaction to *Shelby County v. Holder* when the Supreme
3 Court, you know, gutted the coverage formula which
4 included all of Virginia. And to my knowledge, no
5 Republican official in Virginia stepped forward to support
6 the bills offered in Congress to actually restore the
7 coverage formula.

8 The Supreme Court invited Congress to do that. There
9 have been bills in Congress. Some, a few Republicans
10 naturally supported that, but for the most part have not.
11 And no one in Virginia, no Republican official in
12 Virginia, has come out in support of restoring,
13 essentially restoring, the Voting Rights Act.

14 Q Virginia is not alone in that regard?

15 A No.

16 Q There are many states other than Virginia, and
17 particularly in states that don't have Virginia's racial
18 history, where they also have not come forward and tried
19 to reinstate those provisions of the Voting Rights Act;
20 isn't that correct?

21 A Sure. There are states all across the country that,
22 you know, tend to, especially, for the most part, broken
23 down as a partisan issue. Here is the intertwining of,
24 you know, party realignment and race, which I don't think
25 you can get away from.

1 Q I just want to clear up for the record, because the
2 expert reports in this case have been submitted into
3 evidence. In your reply report, which you submitted in
4 response to the expert report of Dr. Palazzolo, you make
5 the point that in the reauthorization vote in 2006 for the
6 Voting Rights Act that there was dissension in Congress on
7 the reauthorization.

8 A Correct.

9 Q By implication, you made the argument in your reply
10 report that some of that dissension was present on the
11 Virginia representative's congress, didn't you?

12 A Well, did I say that directly? I certainly remember
13 the -- I know what you are referring to. I did --

14 Q Let me ask you this. You do know, don't you, that
15 the Virginia Congressional Delegation voted unanimously in
16 favor of the reauthorization?

17 A Which -- with one absentee abstention, yes.

18 Q You are not aware, are you, of any published reports
19 of Virginia members of Congress standing up during the
20 debates in Congress and speaking out against
21 reauthorization?

22 A Right. I am not making that claim, no.

23 Q So seven years before the enactment of Senate Bill
24 1256, no Virginia Republican voted against the 25-year
25 extension of the Voting Rights Act?

1 A Correct.

2 Q Let's talk a little bit about Governor Wilder's
3 election -

4 A Okay.

5 Q - in 1989.

6 Would you agree this is evidence of a break in any
7 pattern of African-American voter disenfranchisement?

8 A Well, it certainly was a remarkable historical
9 election. But I don't know that I could necessarily -- it
10 doesn't necessarily mean that there weren't still voters
11 whose votes were suppressed. I am not quite sure -- I
12 know certainly African-Americans turned out in large
13 numbers. That contributed mightily to his election. So I
14 am not claiming that there was X number of black voters
15 who were not able to vote in that election. I don't think
16 you can assume that there weren't still obstacles to black
17 voting at the local level or state level.

18 Q He was the first African-American to be elected
19 governor of any state; isn't that correct?

20 A Correct.

21 Q And there have only been two since then of any state
22 in the country?

23 A Yes. Only one elected, and then one who became
24 governor when Spitzer stepped down.

25 Q That would be Paul Patrick in Massachusetts?

1 A Correct.

2 Q Governor Wilder's election to governor in 1989 is an
3 event that would have been impossible in Virginia prior to
4 1965?

5 A Of course.

6 Q Although he may have tried to downplay it, race was
7 an issue during the Wilder campaign?

8 A Yes.

9 Q And as a matter of fact, it worked to his benefit by
10 mobilizing African-American voters, didn't it?

11 A Well, it certainly mobilized African-American voters,
12 but also clearly turned off many white voters. I would
13 think in balance you are probably correct, probably
14 mobilized more black voters. But who knows how many white
15 voters voted against him based on race. It is impossible
16 to know.

17 Q Governor Wilder, in fact, had a bi-racial coalition
18 and could not have won without the support from white
19 voters; isn't that right?

20 A Yes. He had a certain -- he did not have anywhere
21 close to a majority of white voters. He had some white
22 voters, absolutely.

23 Q Two-thirds of Wilder's votes came from white voters?

24 A Yes. But he didn't get anywhere close to two-thirds
25 of the white votes.

1 Q 41 percent of the people that supported Doug Wilder
2 were white, white voters; weren't they?

3 A Yes.

4 Again, doesn't mean he got his percentage of the
5 white -- I don't know exactly of the top of my head what
6 percentage of white voters it was. It would be a
7 different number.

8 Q In Virginia, Democrats haven't nominated an
9 African-American candidate for state-wide office since
10 Governor Wilder, have they?

11 A Not to my knowledge.

12 Q In fact, Virginia Republicans during that time period
13 since '89 have nominated two African-American candidates,
14 haven't they?

15 A I assume you are right about that.

16 Q You are aware of Maury Stockins who ran for Senate in
17 '88?

18 A Vaguely. I was here in 1988, but I don't remember
19 that specifically. I don't remember who he is.

20 Q How about E. W. Jackson for Lieutenant Governor
21 nominated in 2013?

22 A Yes. I was not here, and so I do not remember.
23 Certainly wasn't involved in that election.

24 Q Let's talk for a minute about redistricting. You
25 touched on this briefly. You talked about the City of

1 Petersburg and how in the '60's and '70's Petersburg was
2 an example of how redistricting prevented the election of
3 minority candidates; isn't that right?

4 A Yes.

5 Q You would agree with me now - and I don't think this
6 is mentioned in your report - but all seven of Petersburg
7 City Council are African-Americans, aren't they?

8 A Currently, yes.

9 Q Is that to you not a sign of progress that has been
10 made?

11 A Of course it is a sign of progress. But it is a sign
12 that progress would not have been made without the
13 enforcement of the Voting Rights Act over time. And I
14 think in, what, 1982 there was 60 percent black, and there
15 was still a majority white City Council. So, yes, that is
16 absolutely a sign of progress, but progress that has come
17 on the heels of, you know, strict enforcement and constant
18 pressure applied under the guise of the Voting Rights Act.
19 Without that, with Petersburg having -- you know, with
20 Petersburg also going from 60 percent African-American to
21 77 or 78 percent now, almost 80 percent of the population,
22 if it didn't have a majority on City Council I think
23 something would be very wrong.

24 Q But it is also a sign that something is right?

25 A Yes.

1 Q They now have a totally black City Council?

2 A Better than it was before, certainly.

3 Q Let's talk briefly about the Virginia Supreme Court.

4 I think you testified that contrary to what you
5 originally said in the original report, the Virginia
6 Supreme Court currently has two African-American justices
7 on it; is that right?

8 A Correct.

9 Q And you are aware there is a possibility there will
10 be a third?

11 A Correct. That has been pending a couple months now.

12 Q Okay. And as you know, or are you aware, that Judge
13 Alston, who is the African-American candidate who is being
14 considered for the Virginia Supreme Court, was supported
15 by Republicans; is that right?

16 A Yes.

17 Q And you know the nomination was stalled because of
18 his year-long gay rights, and had nothing to do with his
19 race?

20 A That is my understanding, is that the Republicans who
21 first supported him, that is the issue they stalled on,
22 yes.

23 Q This reflects, as we are talking about before, the
24 emphasis that modern Republicans place on family values
25 and social issues, doesn't it?

1 A I suppose. I have not followed his nomination that
2 closely. It would make sense if gay rights is the issue,
3 that would be tied in with family values. I am not
4 prepared to testify as an expert on his beliefs or the
5 particular issues that the current legislature had with
6 him.

7 Q Talk about Senator George Allen for a moment. Would
8 you agree with me that whereas that but for his infamous
9 "macaca" remark, he might have gotten elected to the
10 Senate in the 1950s, and the fact he used that comment was
11 his undoing in 2006?

12 A I would agree that a number of voters saw that as
13 important and did not vote for him as a result, and that
14 might have cost him the election. Certainly cost him the
15 chance to run for president in 2008. As I have said
16 previously in my report, that, you know, again, the issue
17 isn't that he is no different from Carter Glass and others
18 before him, but that well into the 21st century, a public
19 official of his stature would feel comfortable enough
20 using that remark. He regretted it later, but he still
21 used it, and it also did not prevent him almost getting
22 his old seat back six years later in 2012. So it did not
23 necessarily destroy him politically.

24 Q So apart from that comment, his senate seat was safe?

25 A Absolutely.

1 Q And you would agree with me this race statement on
2 his part ended his chances of seeking national elective
3 office?

4 A Certainly my view of it.

5 Q You would agree this wouldn't have hurt George Allen
6 if he was running in the Carter Glass era?

7 A Well, I don't know about nationally. I think it
8 wouldn't have hurt him in the south. There might have
9 been parts of the north where that might have been an
10 issue. There is certainly many areas of the north where
11 people would not have had an issue, but I'm not sure if
12 someone was overtly, you know, racist as Carter Glass
13 would have done on the national stage. I am not quite
14 sure. I am not comfortable answering that definitively.

15 Q If he was running for the Senate in Virginia during
16 Carter Glass?

17 A Sure. I thought you said on a national level.

18 Q Would it impress you to learn George Allen won in
19 excess of 15 percent of the African-American vote in 2006?

20 A I am aware he got between 15 and 16 percent, yes.

21 Q Well --

22 A I realize that compared to other, you know, that is
23 more than Mills Godwin's six percent. But that is still a
24 fairly small percentage of the population.

25 Q He got that percentage despite the fact that he made

1 a racially overt comment?

2 A He did .

3 Q Let me touch for just one minute on busing, which is
4 something that you testified about during direct
5 examination. You would agree with me, wouldn't you, that
6 busing in the late 1960's and '70's wasn't just an issue
7 in Virginia?

8 A Correct. It wasn't. In many ways Boston, for
9 instance, as I pointed out in our reply report, had some
10 of the worst violence related to busing. Absolutely.

11 Q And the busing violence and the busing controversy
12 was an issue in many northern states, but didn't have
13 Virginia's racial history?

14 A Correct.

15 Q In your report, you touched on racial segregation in
16 housing as well. Do you recall that?

17 A Yes.

18 Q You would agree with me that racial segregation in
19 housing is also present in many northern and mid-western
20 cities that are in states that don't have Virginia's
21 racial history?

22 A Of course.

23 Q This would be examples of cities like Boston, New
24 York, Cleveland, Chicago, Milwaukee and Detroit?

25 A Correct.

Smith - cross

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1 Q Dr. Smith, there are some statements in your opening
2 report regarding the rate at which African-Americans and
3 other non-whites are likely to lack the forms of ID
4 necessary to vote in Virginia. Do you recall that?

5 A Yes.

6 Q But you haven't performed any studies on possession
7 of photo identification in Virginia, have you?

8 A I myself have not. Only read the reports.

9 Q Okay. And the reports that you relied on in your
10 expert report were the GAO report?

11 A Correct.

12 Q And a report by the Brennan Center?

13 A Yes.

14 Q And you would agree with me, wouldn't you, that the
15 GAO report did not review any study of Virginia voter
16 identification laws?

17 A Yes.

18 Q And the national study reviewing the GAO report only
19 looked at possession of driver's licenses and passports;
20 correct?

21 A My recollection, yes.

22 Q And you would agree, don't you, that the range of
23 photo ID acceptable in Virginia is much broader than
24 driver's licenses and passports?

25 A Yes. There are a few others.

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1 Q You also cited, and relied upon, the Brennan Center
2 report?

3 A Yes.

4 Q But you only reviewed the summaries and synopsis of
5 that report, correct? Didn't read the entire report?

6 A Correct.

7 Q You would agree with me that even from reading the
8 summary you learned that the Brennan Center report only
9 asked people about possession of government-issued ID's?

10 A That sounds correct. I would like to look to be
11 sure, but I will take your word for that.

12 Q Could I have one moment, Your Honor?

13 I don't have any further questions.

14 THE COURT: All right.

15 Redirect of the Doctor?

16 MS BRANCH: Yes, Your Honor.

17 THE COURT: Go right ahead.

18 REDIRECT EXAMINATION

19 BY MS BRANCH:

20 Q Dr. Smith, through the course of your work studying
21 Virginia history, have you become familiar with
22 contemporary "Virginia history?"

23 A I certainly think so. I am familiar with the
24 literature and people writing on, you know, the more
25 recent period, yes.

1 Q Have you authored any books recently?

2 A My most recent book which looked at the Supreme Court
3 reapportionment decisions of 1960's came out about a year
4 and a half ago.

5 Q Did you touch on anything related to the history of
6 Virginia in that book?

7 A Yes. As I mentioned earlier, one of the core cases
8 that was decided along with *Reynolds v. Simms* was *Davis v.*
9 *Mann*, which challenges malapportionment in Virginia. So
10 in doing research for the book, I looked extensively at
11 the record in that case.

12 Q Mr. Finberg asked earlier about your book entitled
13 "Managing White Supremacy." How long did you spend doing
14 research for that book?

15 A About seven years from start to finish.

16 Q Was the research you presented in the book impacted
17 by outside influences in any way?

18 A Well, I guess I don't know exactly. I think
19 certainly my best effort to be entirely objective, and to
20 look at all of the sources and using methodology that most
21 historians would agree are correct. I was not being
22 funded by outside sources with a particular political
23 agenda, if that is what you mean by that.

24 Q Is the history that you presented in that book still
25 accurate to your knowledge?

1 A To my knowledge, yes.

2 Q You also talked earlier about George Allen and the
3 infamous "macaca" statement that he made. Who was that
4 racial slur, you testified it was a racial slur, the term
5 "macaca," who was that slur directed towards?

6 A My understanding it was a young man of south Asian
7 descent who was in the audience. And he, I think, was a
8 college student, I believe at the time, and resident of
9 Virginia of south Asian descent.

10 Q George Allen was elected to public office after he
11 made that statement; is that correct?

12 A After the statement? That was during. No, he was
13 not elected in the 2006 election.

14 Q He ran for office?

15 A He ran that. Was in the midst of the Senate campaign
16 of 2006, yes.

17 Q And what percent of the white vote did he win in that
18 election?

19 A I would -- it was overwhelming. I mean, he was
20 still -- well, actually, no, I actually don't know. I
21 would have to look at the exact figures to see the
22 breakdown. I don't actually know.

23 Q Mr. Finberg stated earlier he won. Was it a majority
24 of the white vote?

25 A I believe so. I assume he still -- yes, he lost

1 votes, but did not lose the majority of white voters. But
2 he only got -- we talked more about the 15 or 16 percent
3 black vote that he got.

4 Q Mr. Finberg also asked questions about changes that
5 have occurred in Virginia.

6 A Yes.

7 Q Did you take into account the fact that changes have
8 occurred in racial politics in Virginia when you
9 originally drafted your expert report?

10 A Of course. I don't know how you wouldn't do that. I
11 think any credible historian would consider, would
12 consider the pros, the cons, the ups the downs. That is
13 what our job is to try to look at the sum total, looking
14 at how the history is impacting the present. But, yes,
15 there is stated over and over in this process that there
16 has been an enormous amount of change, and nobody, no
17 credible scholar would deny that. But that does not mean
18 there does not remain consistently obstacles of various
19 sorts to sort of full realization actual American
20 citizenship.

21 Q You would agree there are aspects of racial politics
22 in Virginia that have not changed?

23 A Well, I don't know that -- I'm not sure that the
24 matter -- the question of -- not so sure that they haven't
25 changed, but evolved in a -- they have evolved in new

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1 ways. And so whereas certainly racial politics are much
2 more overt in the past, I think they are more subtle now.
3 And they work in different ways.

4 Q No further questions, Your Honor.

5 Thank you, Dr. Smith.

6 THE COURT: May be he excused?

7 MS BRANCH: Yes.

8 MR. FINBERG: Yes, Your Honor.

9 THE COURT: You are free to go. Thank you for your
10 testimony.

11 (Witness stood aside)

12 MR. SPIVA: We don't have any further witnesses
13 today. I think we went a little quicker through the ones
14 this morning than we anticipated. I wonder if Your Honor
15 would mind if we broke for the day?

16 THE COURT: I will do that today because I know you
17 are probably not accustomed to the pace we move here. I
18 will tell you, back in the old day when I was practicing
19 law the Judge would say, fine, you have rested your case.
20 But I wouldn't do that.

21 MR. SPIVA: I appreciate that.

22 THE COURT: You laugh. They did.

23 MR. SPIVA: I always had trepidation of running out
24 of witnesses. I know some Judges do that. I thought with
25 nine lined up --

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1 THE COURT: I won't do that to you. We will recess
2 until tomorrow morning at 9:00 o'clock.

3 MR. SPIVA: Thank you, Your Honor.

4 THE COURT: How many witnesses will you have
5 tomorrow, do you know?

6 MR. SPIVA: I need to look at the schedule.

7 THE COURT: Make sure you have a couple in the bull
8 pen in case you need them. Okay?

9 MR. SPIVA: We will.

10 THE COURT: All right.

11 MR. SPIVA: Thank you.

12 MR. FINBERG: Thank you very much, Your Honor.

13 THE COURT: We will stand in recess until tomorrow
14 morning at 9:00.

15 REPORTER'S CERTIFICATE

16 I, Krista L. Harding, OCR, RMR, Notary
17 Public in and for the Commonwealth of Virginia at
18 large, and whose commission expires March 31, 2016,
19 Notary Registration Number 149462, do hereby certify
20 that the pages contained herein accurately reflect
21 the notes taken by me, to the best of my ability, in
22 the above-styled action.

Given under my hand this 8th day of March, 2016.

21 _____
22 Krista L. Harding, RMR
23 Official Court Reporter
24
25